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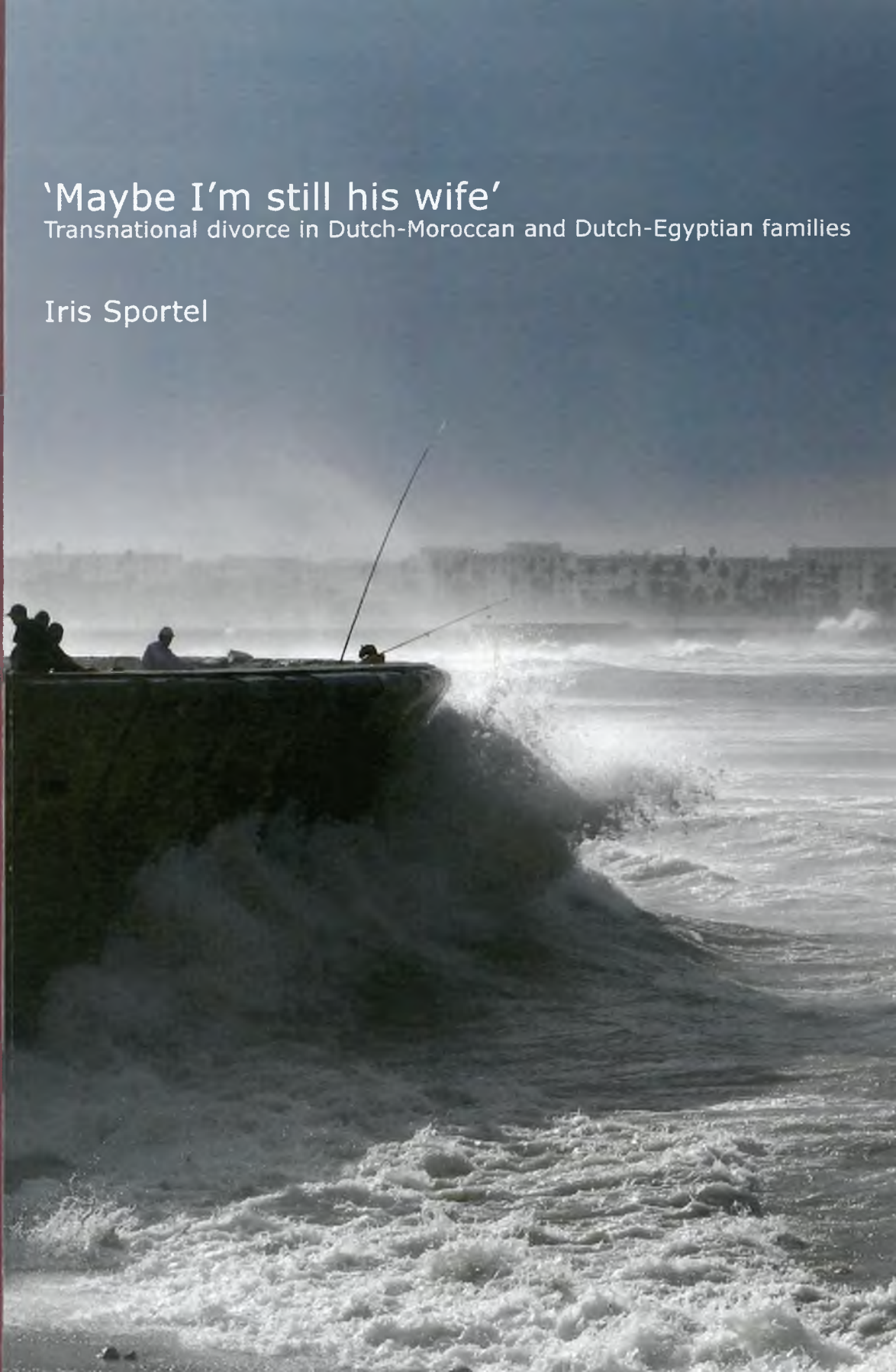
Transnational divorce in Dutch-Moroccan and Dutch-Egyptian families

Iris Sportel



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Promotoren: Prof. mr. A.B. Terlouw
Prof. dr. W.H.M. Jansen
Prof. mr. B. de Hart (Universiteit van Amsterdam)

Manuscriptcommissie:
Prof. dr. L.E. de Groot-van Leeuwen
Prof. dr. L.P.H.M. Buskens (Universiteit Leiden)
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Chapter 1. Introduction

1.1 Introduction

> Malika, a single mother working in government service in the Moroccan city of Casablanca, met a Dutch businessman Martin, when he was visiting Morocco for work. They fell in love and got married. For both it was their second marriage. The couple decided that, after their marriage in Morocco, they would live in the Netherlands, where Martin had his business, and that they would return to live in Morocco after Martin's three adolescent children would have left home. Malika also had a daughter, aged seven, whom she would bring to the Netherlands. After their marriage, it took the couple almost a year to navigate the complex Dutch migration procedures to get permission for Malika and her daughter to settle in the Netherlands. Malika used this time to sell her apartment, quit her job, and prepare for migration.
> Upon her arrival in the Netherlands, Malika started to look for new employment. At first she felt 'handicapped' for not being able to speak Dutch, and while she studied to learn the language, she found a small, freelance job. Malika also did all of the housework, while Martin worked long hours in his business. As Malika felt marriage is all about sharing, she freely spent her savings from selling her Moroccan property on the communal household. Her freelance work brought only very little money while Martin tightly controlled his earnings from his successful business and felt Malika should take responsibility for paying for her and her daughter's upkeep. The marriage was not a happy one. In fights Martin regularly told Malika to pack up and go back to Morocco, and after a while he became abusive. Malika did not know he was serious about divorce until she received a letter from his lawyer, just before she would have been living in the Netherlands long enough to be entitled to an independent residence permit. At the moment of the interview, Malika and Martin were entangled in a series of court cases involving property and maintenance disputes. Malika felt that, as a Moroccan migrant, she was less likely to be believed by the Dutch authorities and court than Martin. At the moment of the interview, the divorce case was still in court. After finishing the Dutch divorce Malika aimed to arrange the Moroccan divorce as soon as possible, as their marriage was still registered there. This means she would probably have had to start another court case in Morocco. However, as she had divorced in Morocco before, Malika was confident that she would be able to handle the Moroccan divorce process.

Malika's story illustrates how spouses from transnational marriages may get into contact with two legal systems during the divorce process, in which the status of their marriage and divorce may differ. Spouses in transnational marriages can get married in one legal system and divorced under another, divorce in both countries, exploit differences between the legal systems or arrange everything locally, in their country of residence. In this study I focus on divorce in Dutch-Moroccan and Dutch-Egyptian families, living in the Netherlands, Morocco or Egypt, and the possible involvement of both Dutch and Moroccan or Egyptian family law. It covers a wide range of contexts, including topical issues such as 'import brides', beach marriages, cultural au-

thenticity and Islamic family law. This study will concentrate on people dealing with several family law systems during their transnational divorce.

Transnational divorces follow marriages in which one of the spouses, like Malika, has migrated. In doing so, spouses have crossed borders, state borders but possibly also religious, cultural or ethnic borders. Some of these borders are highly marked, others are less so. To be able to marry Malika in Morocco, Martin had to formally convert to Islam. The considerable differences, as well as unexpected similarities, in marriage and divorce regulations between the Netherlands, Morocco and Egypt may create all kinds of problems for members of transnational families as well as possibilities for strategic action, especially during divorce. During the divorce process of Martin and Malika, it became clear that the marital property regime applicable was the main area of legal conflict. Martin thought Moroccan family law should be applicable to their marriage, as he married Malika in Morocco. This means that all property would remain separated and that he could simply put Malika out of the marital home, which he owned. Malika, having spent all her savings on the communal household, assuming that they would share – while in Moroccan family law Martin would have been responsible for maintaining her – then would return to Morocco penniless. However, during the court case, Malika's lawyer argued that Dutch marital property law should be applicable, as the Netherlands were their first country of communal residence. In a Dutch marital property regime, all property and debts are considered to be communal. This would mean that Malika would get half of all Martin's property, including a share of his business and the marital home. Moreover, Martin would have to pay maintenance to Malika. Instead of each adhering to their own national system, Malika and Martin each seemed to have had the other's country's marital property regime in mind. If Moroccan law would be applied to their divorce, Malika would have gotten the worst of the differences between the two legal systems, having no claim to Martin's property, while having spent her own property on costs Martin should have paid.

A transnational divorce can thus lead to several kinds of conflicts and possibly legal disputes, making it possible to study the interactions of transnational family members with the legal systems of the three countries. A divorce has a variety of financial consequences, including maintenance and the division of property. Another potential area for conflict after divorce is child care and parents' rights to custody and guardianship of their children. As Martin and Malika had no children together, they did not make any arrangements for child custody or visitation. The analysis of these disputes is the first aim of this research.

In addition to analysing legal disputes relating to divorce, this research project also aims to study the meaning and working of family law in everyday life. For this purpose I will draw on the work of Merry (1986; 1990) and Ewick and Silbey (1998). Ewick and Silbey have studied law in everyday life by looking at breaches from normal routine. Divorce is therefore a good opportunity to observe the working and meaning of family law in daily life. It was not until the moment of divorce that Malika and Martin reframed their conflicts about money in expectations based on family law. Even though marital property law is already present during the marriage, the legal

ownership of Martin's business and home and Malika's savings only became relevant at the moment of divorce. This redefinition of daily life in legal terms at the moment of divorce can be shocking for people. The perspectives and experiences of former couples in marriage and divorce differ, especially when children are present (Madden-Derdich & Leonard 2002). In custody disputes, both parents can get the impression that law is gender-biased to the advantage of the other party (Kaganas & Day-Sclater 2004). Gender, ethnicity and social class can be important factors contributing to the way partners experience and narrate marriage and divorce (Walzer & Oles 2003; Hopper 2001). In transnational marriages, religion and conceptions of religious and cultural differences can also play a role. During the legal process, one partner may find a recognition of rights that they had not experienced before while the other may feel deprived, based on perceived power relations during the marriage (Merry 2003).

Law is just one of many interdependent social structures, which influence members of transnational families. Transnational marriages and divorces are not isolated affairs; they take place in a social context. Personal networks of family and friends can provide support during the transnational divorce process. To understand the choices people make during marriage and divorce, the social fields they belong to and the norms these fields produce have to be the subject of research too. In this study I aim to explore the different social fields and their interactions as well as their influence on the members of transnational families in their dealings with family law. Organisations, family members, social networks and legal professionals all are involved in providing support in transnational divorce cases, producing norms on how a (transnational) marriage and divorce should be arranged. These themes lead to a discussion of the aim and main research question of this study.

1.2 Aim and research questions

This study aims to gain more insights into the role of law in transnational Dutch-Egyptian and Dutch-Moroccan divorce from the perspectives of the people involved in these marriages. As such, it adds to the understanding of the working of law and legal systems in everyday life in a transnational context. The main research question of this study is:

How do spouses from transnational Dutch-Moroccan and Dutch-Egyptian marriages handle law in case of divorce; how do they deal with different legal systems and how can this be explained?

This question can be divided into five sub-questions. As this is a socio-legal study, these questions will concentrate both on the law and its effects as well as other factors relevant for how spouses handle and experience the law; the social context and power relations between the spouses. Laws regarding divorce also include the topics of child custody and contact; marital property; and maintenance.

1. How is divorce regulated in Dutch, Moroccan and Egyptian family law and private international law and how are these regulations implemented in practice?

2. What are the consequences of these regulations for transnational couples and to what extent and how do these consequences differ on the basis of gender, ethnicity and social class?
3. How do the power relations between the spouses in transnational marriages operate; how do the spouses use their power in the divorce process and how does the divorce change existing marital power relations?
4. Which persons and organisations form the social context in which transnational divorce takes place? How does their involvement constrain or support the spouses in the divorce process?
5. Which meanings do spouses in transnational divorce attach to laws relating to divorce in their everyday life and how does their legal consciousness influence the divorce procedure.

1.3 Transnational marriage and divorce in literature

Although little has yet been written on the subject of transnational divorce in relation to Dutch and Egyptian or Moroccan family law, this subject has links with several bodies of literature: on Transnational marriage; Transnational divorce; Transnational families and law, Islamic family law, and Dutch family law. Below, I present a short overview of these fields of literature and their relevance for this study.

1.3.1 Transnational marriage

Literature on transnational marriages tends to be either on mixed marriages, marriages between partners from different ethnic backgrounds, or on marriages of migrants with a partner from their country of origin, so-called migration marriages. What is seen as a mixed marriage depends on the context and the perceived distance between the partners. In the Dutch context mainly marriages between partners of different ethnic backgrounds tend to be seen as mixed. Whereas until the 1970s the term mixed marriages was mostly used to describe marriages between persons of different Christian denominations (Hondius 1999), religious differences are nowadays connected to and regarded as a part of ethnicity or culture. Marriages between partners of the same ethnic background but with different religions are unlikely to be seen as mixed. Similarly, because of this focus on ethnicity and culture, marriages of – second generation – migrants with partners from their country of origin are seldom seen as mixed marriages, even though the spouses have been raised in different countries. This research combines both groups, using the term transnational marriages.

The empirical literature on transnational marriages seems to be focused mostly on the beginning of the transnational relationship, with as a main issue the explanation or description of the coming about of the marriage. Some authors try to find explanations in circumstances. According to Bacas, for example, socio-economic processes contributed to the possibility of transnational mixed relationships. Globalised markets, modernised transport and communication systems together with a

growing tourist industry offer more and better opportunities for cross-border contacts. Furthermore, because of processes of individualisation in Western Europe, women have less constraints placed on them with regard to marriage choices (Bacas 2002). Marriages of migrants are often interpreted in terms of integration. Whereas mixed marriages between migrants and the native population of a country are often seen as a sign of and contributor to the integration of ethnic minorities, marriages with partners from the country of origin are seen as problematic and as a sign of poor integration (De Hart 2003; Van der Zwaard 2008). In addition to the explanation for migration marriages being a lack of integration in the new country of residence, a second explanation for the high number of transnational marriages with partners from the country of origin by some groups of migrants is marriage as a strategy to obtain sought-after legal residence in a European country. This explanation is especially popular among policy makers. According to Charsley (2005), this factor does play a role in explaining the very high number of cousin marriages in transnational marriages of Pakistani people in the UK. A possibility of migration can be seen as capital that needs to be kept in the family. However, strategic interests are not the only reason. These Pakistani parents also try to limit the risk of divorce, and thus look for a partner they think is best suited for their child in their network in their country of origin. Because of the distance, monitoring potential candidates is difficult. Transnationalism therefore enhances the need for marriages with close relations (Charsley 2005: p. 385). Based on their study of partner choice of second generation Moroccan and Turkish migrants in the Netherlands, Sterckx & Bouw (2005) add some further explanations why many of them choose a partner from their parents country of origin. For example, parents tend to be more relaxed during holidays in their country of origin, giving their children more freedom and therefore the opportunity to meet potential partners. On the other hand, potential partners have to meet all kinds of demands concerning background, education and religion. The pool of possible candidates in Morocco or Turkey is simply bigger than in the Netherlands, even when marrying transnationally was not the initial intention (Sterckx & Bouw 2005. p. 47).

Other authors have tried to find explanations for mixed marriages in characteristics of persons who contract such a marriage. The eldest and most famous explanation of this kind is the status-exchange hypothesis, first described by Merton and Davis in 1941. According to this theory, in a mixed marriage there is an exchange of socio-economic resources and status. Members of groups of low status, for example ethnic minorities, compensate their lower status with higher socioeconomic resources, for example when marrying a poor member of a group of high status. Kalmijn & van Tubergen have tested this hypothesis in the Netherlands, but found little evidence for status-exchange (Kalmijn & van Tubergen 2006). A more personal explanation is given by Appel (1994). She interviewed German women about their choice for a foreign, Islamic, husband. These women shared a longing for strong family values and relations which they found in their Islamic husbands. Appel sees these marriages as a reaction to the decline of certain traditional marriage and family values in Germany. On the other hand a mixed marriage to an Islamic man offers

possibilities to fulfil certain modern demands such as the development of a individual identity and self-fulfilment (Appel 1994).

All these studies deal with the initial coming about of the marriage. Research on later stages of the relationship is far more limited. De Hart (De Hart 2002, 2003) has done research on mixed relationships in nationality and immigration law and the influence on the daily life of Dutch citizens with a foreign (non-EU) partner. This research is mainly about the initial stage of the marriage as well, when partners who want to live together in the Netherlands have to go through an extensive legal procedure to be able to do so.

Other literature concentrates on the communication in mixed relationships, an aspect which is important during divorce as well. Waldis (1998) focuses on intercultural communication in Maghreb-European marriages in Switzerland and Tunisia. Speelman (2001), who based her research on interviews with Dutch-Egyptian couples living in the Netherlands, concentrates on interreligious dialogue between Muslims and Christians. She analysed styles of communication, belief and dealing with difference. Ask writes especially about the strategies foreign women married to Egyptian men living in Egypt use in handling 'mismatched expectations' about gender-based behaviour (Ask 2006, p.115). Hondius (1999) describes the process of acceptation of ethnically or religiously mixed couples living in the Netherlands and the way they handle reactions of others to their relationship (Hondius 1999).

Finally, some research on transnational families is of a more generally descriptive kind. Especially the (life-) stories of women in transnational marriages are at the centre of these publications. Rozema (2005) describes the stories and problems of several European, mostly Dutch, women married to Egyptian men and living in Egypt. She ends her book with some legal, financial and other advice to women in such situations. Van der Zwaard (2008) focuses on female marriage migrants in the Netherlands, many of them Moroccan. She held focus group discussions with these women and interviewed key informants. Her book describes the stories and problems of these women, concentrating on issues such as learning the Dutch language, the family-in-law, work, and other issues relating more or less to the theme of integration. Luyckx (2000) describes the life stories of second generation Turkish women in Belgium, a majority of them having married transnationally. In the same volume, Buitelaar (2000) analyses life stories of young Moroccan women in the Netherlands. While most of this literature deals exclusively with the stories of women, this study will add the stories of both men and women in transnational divorce. Furthermore, I will include both migration marriages as well as mixed marriages.

1.3.2 Transnational divorce – research and statistics

Although there is, as Hondius (1999, p. 83) claims, 'a universal concern for the stability and durability of mixed marriages', literature on transnational divorce is very limited, in the Netherlands as well as internationally, with the notable exceptions of Liversage (forthcoming) writing on Turkish migrant couples and divorce in Denmark, and Rosander (2008) writing on Moroccan migration marriages and divorce in Spain.

Literature available on transnational divorce consists mostly of statistical studies on the divorce risks of certain groups (e.g. Van Huis & Steenhof 2003; Kalmijn & Van Tubergen 2006; Kalmijn, De Graaf & Janssen 2005). Van Huis and Steenhof found that especially couples consisting of a non-western man[1] (including Moroccans and Egyptians) married to a Dutch woman have a much higher divorce risk than Dutch-Dutch couples. After ten years, 17% of Dutch-Dutch marriages have been dissolved, while 30% of marriages between a Dutch man and a non-western foreign woman and 54% of marriages between Dutch women and non-western foreign men have ended in divorce. Divorce rates of second-generation non-western migrants with a foreign partner are slightly lower. Native Dutch women with a Moroccan husband have the highest divorce risk. 74% of these marriages are dissolved after ten years. A marriage between two Moroccan first generation migrants has a divorce risk of 30% and a marriage between a second generation Moroccan wife and a first generation Moroccan husband has a divorce risk of 43%[2] (Van Huis & Steenhof 2003, p. 10-11). Kalmijn et. al did research on divorce rates in transnational marriages as well, but using different methods. They calculated divorce rates for marriages contracted between 1974 and 1984 and took nationality as a main criterion. In this study both Moroccan women married to Dutch men as well as Moroccan men married to Dutch women had a far higher percentage of divorce, 63.6% and 52.2% respectively, than Dutch-Dutch (11.4%) and Moroccan-Moroccan (1.6%) marriages.[3] They also noted that, although the divorce risks in nationality-mixed marriages were indeed higher, it declined over time. In the first five years the risk of divorce was four to five times as high,[4] and afterwards it went down to 1.5-2 times as high (Kalmijn, de Graaf, and Janssen 2005, p. 81-82).

Some researchers, and especially policy makers, explain the high divorce rate of some kinds of transnational marriages by considering the divorce as signalling that

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1 Although I do not approve of the vague and problematic term 'non-western', the categories 'western' and 'non-western' immigrants are used by the CBS, the Dutch statistics bureau, which provided the data Van Huis & Steenhof used for their analysis. Non-western countries include: Africa; Asia, except Japan and Indonesia; South America; and Turkey. Western countries include all countries in Europe, except Turkey; North America; Indonesia; Japan; and Oceania (Van Huis & Steenhof 2003, p. 2). For some critical remarks about first and second generation migrants or 'allochtonen' see also (Groenendijk 2007; Terlouw 2010).

2 The divorce risk of a Dutch man married to a Moroccan woman could not be calculated because of the small numbers involved (Van Huis & Steenhof 2003). However, Van Huis & Steenhof do not provide the divorce risk for a second generation Moroccan husband and a first generation Moroccan wife either, while it is unlikely that the numbers of this group are too small for the divorce risk to be calculated.

3 The calculations of Van Huis & Steenhof and Kalmijn et al. vary significantly, although both base themselves on data provided by the CBS. I believe this is not only linked to the different methods used and periods analysed (Van Huis & Steenhof use more recent data), but also to differences with regard to definition and criteria. Van Huis & Steenhof use data on the country of birth of respondents and their parents, distinguishing different generations of migrants, whereas Kalmijn et al. use nationality as a criterion. This difference in definition might be related to a change of registration policies by the CBS.

4 4-5 times as high as the highest level of divorce between non-mixed marriages in the two groups both partners come from (Kalmijn, De Graaf & Janssen 2005, p. 82).

those marriages were marriages of convenience. Because a marriage or family bond with a legal resident is one of the few ways for non-EU nationals to obtain legal residence in the Netherlands, the fear of marriages of convenience, for example to give a foreigner access to the Dutch labour market and social services, is persistent. Although research has shown there is little or no evidence to justify this claim of large-scale marriages of convenience (Strik, De Hart, and Nissen 2013; Hondius 1999; de Hart 2003; EMN 2012), it continues to be mentioned as an explanation for high divorce rates (e.g.: van Huis and Steenhof 2003). But as Hondius rightly remarks, one cannot draw conclusions about motives based on marriage or divorce statistics (Hondius 1999: p. 83-96).

1.3.3 Transnational families and law

In transnational marriage and divorce, several family law systems can interact. Although a number of legal studies has been done on the impact of Islamic law or cultural and religious claims of Muslims in legal procedures in the Netherlands (e.g.: Rutten 1988; Berger 1992; Rutten 1999; Jordens-Cotran 2007), research on the way litigants and the legal system handle this influence or interaction remains limited. Notable exceptions are Kulk's (2013) research on Dutch-Moroccan and Dutch-Egyptian families handling the legal relations between parents and children and Carlisle's (Carlisle, forthcoming) study on transnational child custody disputes between the Netherlands, Morocco and Egypt.[5] Older research includes a small-scale study on strategies of women of Moroccan descent living in the Netherlands in applying for a transnational divorce by Gaughan (2002); Van Rossum's work on Dutch judges and multicultural issues (Van Rossum 2007, 2007); and Strijp's work on Moroccan migrants in the Netherlands and inheritance (Strijp 1999). However, Moroccan family law reforms in 2004 have significantly changed the legal situation since the research projects of Strijp and Gaughan took place. This research project will take both the old and new Moroccan family law into account. Outside of the Netherlands, empirical literature on transnational families in a European-Middle-Eastern context and law includes Rabo, writing on Syrian transnational families and law (2011); and the work of Foblets, writing about Moroccan migrants in Belgium (Foblets 1994; Foblets & Verhellen 2000).

I have not been able to find literature about the influence of Dutch family law in Morocco or Egypt. A substantial part of international literature on transnational families and law, both legal and empirical, is from the British context, where British-born East Asians living in Britain often marry a partner from the Indian subcontinent (Bano 2007; Charsley 2005, 2007; Charsley & Shaw 2006; Keshavjee 2007; Khir 2006; Mehdi 2003, 2005; Shah 2007; Yilmaz 2002). The Pakistani, Indian and Bangladeshi communities in the UK show some similarities to the Moroccan and Turkish communities in the Netherlands in the pattern of second generation migrants marrying

5 Both studies were part of the same larger research project as this study on transnational divorce, directed by prof. dr. B. De Hart at the Radboud University Nijmegen.

partners from their country of origin. It is estimated that 49% of males and 32% of females in Britain from a Pakistani, Indian or Bangladeshi background contract a transnational marriage (Cameron 2006: p. 2). Similar patterns have been observed in Denmark where Mehdi (2003; 2005) has done research on the influence of Pakistani Islamic marriage and divorce law among Pakistani migrants in the Danish context, such as dower practices.

1.3.4 Islamic family law: Divorce in Morocco and Egypt

There is a wide range of literature available on Islamic family law, both from Western and Arab writers. Dupret (2012, 2007) and Voorhoeve (2012) have raised important questions with regard to the academic discussion of Islamic family law as being Islamic. They claim that, through the focus on the Islamic aspects of law in the MENA region, 'Islam's influence was overemphasised, while the impact of socio-political transformation was neglected' (Dupret & Voorhoeve 2012, p. 1). They argue instead for a study of what people do with the law and legal institutions. Such literature on divorce in Islamic countries, based on empirical research, is available, including the implementation of laws regarding divorce in courts in Morocco (Zeidguy 2007; Mir-Hosseini 2000), Tunesia (Voorhoeve 2009), Syria (Carlisle 2007; Van Eijk 2013), and Egypt (Sonneveld 2004; Hill 1979; Sonneveld 2009). Mir-Hosseini (2000) has done research on family courts in Morocco and Iran, focussing on marriage and divorce and women's strategies. She has interviewed judges and parties, reviewed court files and witnessed court sessions. However, her research was done during the 1980s, before the significant reforms in Moroccan family law in 2004. Zeidguy (2007) has analysed the implementation of the new *Moudawana* by looking at jurisprudence, paying special attention to the new divorce ground of *chiqaq* (discord). Sonneveld (2004, 2009) carried out research on the implementation of the new *khul'* divorce law in Egyptian courts, interviewing judges and women involved in divorce cases. Lindbekk and Sonneveld have studied the developments in Egyptian debates on family law since the 2011 revolution (Lindbekk & Sonneveld forthcoming). Bernard-Maugiron and Dupret describe the history of divorce law in Egypt and the implementation of new laws with a focus on the legal position of women (Bernard-Maugiron & Dupret 2008). However, all of these studies focus on the national context, and none pay attention to transnational families. This study will provide a law in everyday life analysis of Egyptian and Moroccan family law from the perspective of transnational families.

1.3.5 Divorce in the Netherlands

The number of empirical studies on legal disputes and divorce in the Netherlands is limited, dating mostly from the 1980s (Van der Werff, Naborn & Docter-Schamhardt 1987; Weeda 1983; Griffiths & Hekmen 1985; Griffiths 1986; Weeda 1983; Ruiter, Prins & Van den Bogaard 1984; Van Wamelen 1987; Van der Werff & Docter-Schamhardt 1987). One of the most extensive qualitative studies on divorce in the

Netherlands is done by Weeda (1983a; 1983b). She interviewed a large number of divorcees, both men and women, about their marriage and divorce. She describes the ideals and opinions on marriage and divorce, the development of the marital relationship, the motives for divorce and the consequences of divorce for her respondents. Because almost 30 years have passed since Weeda did her research, this study does not only provide information on transnational divorce, but it will also present new insights on contemporary divorce practices in the Netherlands.

More recent examples are the work of Dijksterhuis (Dijksterhuis & Vels 2011; Dijksterhuis 2008) on child maintenance issues and the research project of Kalmijn et al. (2001), who did survey research in 1998 on divorce in the Netherlands between 1950 and 1990. They published their results in a special issue of the journal *Tijdschrift voor Sociale Wetenschappen*. Included were articles on issues such as divorce motives (De Graaf & Kalmijn 2001), employment and divorce (Kalmijn, De Graaf & Poortman 2001), the economic consequences of divorce for men and women (Poortman & Fokkema 2001) and the effects of divorcing parents on the life course of children (De Graaf & Fischer 2001). All these studies use mostly quantitative analysis, dividing for example divorce motives into four categories. This research project will focus on divorce from a qualitative, in-depth perspective, analysing the stories, meanings and interpretations of respondents and giving them a voice.

A research subject closely related to divorce which has been blooming recently is the effects of divorcing parents on children. A much-quoted book on this topic is *Scheidingskinderen*, by Spruijt (2007). In this work he gives an overview of recent research on the effects of divorce on children. A recent report on divorce in the Netherlands by E-Quality also devotes much of its attention to this subject (Clement, Van Egten & De Hoog 2008). This study, however, will focus on the divorce process itself and will take the consequences for the children into account only to the extent that the perceptions of these consequences influence the decisions of divorcing parents.

Internationally, especially in the UK, US and Canada, divorce is a more common research topic, resulting in a more extended body of literature, especially on custody cases (e.g.: Madden-Derdich & Leonard 2002; Kaganas & Day-Sclater 2004; Hopper 2001; Collier & Sheldon 2008; Rhoades 2002; Boyd 2004; Williams 2004). Specifically, some attention has been paid to the role of gender, ethnicity and social class play in divorce, notably during custody cases, but there has not been much explicit attention paid to transnational families (e.g.: Fox & Kelly 1995; Williams 2004). Sarat and Felstiner (1995) describe the interaction between divorce lawyers and their clients. They based their book on interviews and observations during different stages of the divorce in two American States. Other approaches include uncoupling narratives (Walzer & Oles 2003) and vocabularies of motives (Hopper 1993).

After this discussion of the fields of research that this interdisciplinary study of transnational divorce relates to, I will now turn to the central concepts. Below I will introduce and define the four main theoretical concepts I use in this study: gender; ethnicity and nationality; social class; and legal consciousness.

1.4 Central concepts

There are several theoretical concepts that play an important role in this study. In this section I will provide definitions for each of these central concepts and outline their importance for this research project. First of all, *gender* is a central theme, both in the academic literature on (Islamic) family law as well as in the interviews. Secondly, I will outline the interconnected concepts of *ethnicity* and *nationality* and the similarities and differences in meaning. Thirdly, the concept of *social class* is a complicated subject in a transnational context, closely intersected with ethnicity and gender. After having discussed gender, ethnicity and social class, I will briefly go into the intersectionality approach. The last theoretical concept is *legal consciousness*. One of the central concepts in the study of law in everyday life is legal consciousness and it can help to understand how people talk about the law and give meaning to their experiences with legal systems.

1.4.1 Gender

Family law is central to the reproduction of the social and cultural order: it arranges for the transfer of material resources from one generation to the next (succession), it organises care for, and socialization of, the next generation (custody and guardianship), and it regulates sexual relations (marriage and its effects). As these various fields are strongly gendered, debates about family law tie in with those on gender relations and 'the position of women', another highly controversial topic in both the colonial and post-colonial periods, often framed in terms of the desirability of westernization versus the call for cultural authenticity (Moors 2003, p. 2)

When speaking about Islamic family law, gender – mostly in terms of the oppression of women – is often the first issue that comes to mind. An important part of the literature on Islamic family law and the Middle East, including literature on Morocco and Egypt, is also from a normative, women's rights perspective, discussing the position of women in family law and contested topics such as polygamy and repudiation (for example: Mashhour 2005; Jansen 2007; Moghadam & Roudi-Fahimi 2005). Mainstream media and some academic writings depict Muslim women as the victims of patriarchal Islamic family laws that grant them little claim to legal rights. This picture leaves little room for women's agency as well as effects in everyday life. According to Hirsch these images are based on a simplistic dichotomy of Muslim women (silenced through law) as the 'silenced Others' of Western women (liberated through law) (Hirsch 1998, p. 2). In Islamic family law, men and women are openly assigned different roles and positions in divorce, for example with regard to child custody. However, although Dutch family law claims to be based on equality, it also contains and produces gender differences, although these are often more concealed and indirect, described by Boor (1999) as the 'hidden morals' of family law (Boor 1999, p. 34-35; Lünnemann, Loenen & Veldman 1999).

Critical analyses of western and Islamic family law rarely meet. Nader (1989) has argued that both orientalist and occidentalist discourses frequently focus on the position of women. By commenting on the position of women in the other society, both the west and the east obscure similar gender inequalities in their own society, implicitly placing the speaker in a superior position (Nader 1989, p. 323-325). This especially holds true for many studies on Muslim family law. This study will pay attention to gender, ethnicity and social class and their intersectionality in the analysis of regulations of marriage and divorce and their implementation in the Netherlands, Morocco and Egypt. I aim to analyse family law beyond stereotypes and dichotomies like the passive Muslim woman, the liberated Western woman and the powerful Muslim man, applying a critical gender perspective to Egyptian and Moroccan family law as well as Dutch family law.

According to Connell (2002), in the most common usage of the term gender it means 'the cultural difference of women from men, based on the biological division between male and female' (Connell 2002, p. 8). He has, however, several important objections to this definition. Through its focus on difference, this definition excludes differences among men or among women or the analysis of gender when there is no difference. Furthermore, the definition is too personal, ignoring large-scale social processes. Connell therefore proposes to see gender as a social structure, but one closely connected to the body.

> 'Gender is the structure of social relations that centres on the reproductive arena, and the set of practices (governed by this structure) that bring reproductive distinctions between bodies into social process. [...] Gender arrangements are reproduced socially (not biologically) by the power of structures to constrain individual action, so they often appear unchanging.' (Connell 2002, p. 8-10)

West and Zimmerman (1987) highlight another important aspect of gender in their famous article *Doing Gender*. They claim that gender is not only relational but also interactional: 'a person's gender is not simply an aspect of what one is, but, more fundamentally, it is something that one *does*, and does recurrently, in interaction with others' (West & Zimmerman 1987, p. 140, emphasis in original). West and Zimmerman also emphasise the structural aspects of gender;

> '[doing gender] renders the social arrangements based on sex category accountable as normal and natural, that is, legitimate ways of organizing social life. Differences between women and men that are created by this process can then be portrayed as fundamental and enduring dispositions.' (West and Zimmerman 1987, p.146)

However, gender is 'done' differently and has different meanings in different cultures and societies, even if it seems natural. According to Connell, cultural patterns do not simply express bodily difference. Sometimes they do, but they can also do more, or less, or something altogether different (Connell 2002, p. 9-10). As Ask observed in her study of foreign women married to Egyptian men and living in Egypt, this can

lead to problems in transnational marriages. The women in her research say they 'did not perceive in the same way the boundary line between femininity and masculinity as their husbands did. They were mixing and blending gender positions that their husbands meant should be separated and dichotomised, something that caused problems' (Ask 2006, p. 121). In this study, gender in transnational divorces will be analysed from the perspective of social relations and interactions; not only to study the relation between family law and gender, but also the way differences in 'gender patterns' (Connell 2002, p. 3) can influence transnational marriages as a potential source of conflict.

1.4.2 Ethnicity and nationality

In the context of this research, it is important to make a distinction between ethnicity and nationality. These two concepts are often connected and can overlap but do not necessarily do so. In this study I will use the term nationality as a legal term. People can or cannot be entitled to a certain nationality of a state, after fulfilling certain demands. This can happen at birth, but nationalities can also be acquired or lost later in life. Ethnicity, however, is more than the legal concept of nationality. An important element of ethnicity is identification. Ethnic identification often starts with assignment by others, establishing an ethnic category. To create an ethnic group, this ethnic identity must be claimed by that group; it becomes subjective. Ethnicity originates, in contrast, by delineating between 'us' and 'them' and has meaning only in a context involving Others (Cornell and Hartmann 1998: p. 18-21).

Cornell & Hartmann define an ethnic group as '[...] a collectivity within a larger society having real or putative common ancestry, memories of a shared historical past, and a cultural focus on one or more symbolic elements defined as the epitome of their peoplehood' (Cornell and Hartmann 1998: p. 19). Brubaker, however, argues for an 'ethnicity without groups' and making 'groupness' a researchable aspect of ethnicity instead of an assumption. He argues against the interpretation of ethnic groups as entities with agency to act on their own (Brubaker 2002). In this study I will consider ethnicity as an aspect of personal identity and relations. Ethnic identity can be the same as national identity, but it does not have to be so. Migrants and even children of migrants are often identified in the Netherlands in terms of their origin, even though they may have only Dutch nationality, especially when visible signs of difference are present. Ethnic groups can also be smaller than national groups. People of many ethnicities can together form one nation with one nationality.

Neither ethnic identification nor nationality is fixed and exclusive; they can be changed during a lifetime and people can have multiple ethnicities and nationalities. When marrying transnationally, for example, it is often possible to adopt the nationality of the spouse as a new nationality, either giving up the original one or as a second nationality. Ethnic identifications can change and shift as well, especially in a transnational marriage. Hondius, for example, describes how partners in mixed marriages sometimes 'take over' the ethnic identification of their spouse; even if they stay in the Netherlands they become 'Moroccan' or 'Spanish' as well as Dutch. Interestingly, ac-

cording to Hondius, Dutch men do this more often than Dutch women. Hondius claims that Dutch women in a mixed marriage, especially with an Islamic partner, have a strong consciousness that many people disapprove of that relationship and implicitly try to defend themselves from accusations of 'renouncing' their Dutchness (Hondius 1999, p. 287). Ethnicity is thus related to both self-identification and assignment to an ethnic category by others. In this study, I will analyse the complex issues of ethnicity and nationality in transnational marriages with regard to their connections to family law and transnational divorce.

1.4.3 Social class

Similar to the way relations of gender and ethnicity are also expressions of inequality, class is closely connected to inequality and power. According to Shields (2008), identities such as gender, ethnicity and social class 'may be experienced as a feature of individual selves, but it also reflects the operation or power relations among groups that comprise that identity category' (Shields 2008, p. 302). In a transnational context, class is a complicated subject, closely intersected with ethnicity and gender. Migration can change the class position of the migrant fundamentally, and assessing the class positions of others in a new context can be difficult. According to Seron and Munger (1996), 'Class describes an individual's position with respect to the central economic and cultural institutions of society and, in turn, relates that position to the social resources available to that individual.' (Seron & Munger 1996, p. 188). Class has economic aspects, such as employment, income, and ownership of economic resources, but these aspects only partly define class. Other sources of capital defining class include Bourdieu's concepts of cultural, social and symbolic capital (Seron & Munger 1996, p. 198-199; Bourdieu 1986). In this study, a theoretically informed concept of class will be used, taking not only economic but also other forms of capital into account.

1.4.4 Intersectionality

According to Shields (2008), intersectionality is 'the mutually constitutive relations among social identities' such as gender or social class; meaning that 'social identities which serve as organizing features of social relations, mutually constitute, reinforce and naturalize one another' (Shields 2008, p. 301-302). Intersectionality 'complicates essentialist constructions of identity' (Rooney 2006, p. 353). The interaction between social identities also means intersectional positions are connected to inequality and power in a more complex way. One can be privileged relative to one group but disadvantaged to another (Shields 2008, p. 302). For example, a working class white Dutch man can be ethnically privileged compared to Moroccan or Egyptian men living in the Netherlands, but the same man can at the same time be disadvantaged relative to other Dutch men of a higher social class. Verloo (2006), however, warns that 'different inequalities are dissimilar because they are differently framed'. They differ in dimensions such as choice or visibility; religion can be changed, but age

cannot; sexuality can be hidden but race cannot. Moreover, social categories themselves 'can be unstable and contested: what counts as race or ethnicity in specific contexts, what counts as young or old, is intertwined with power in many ways' (Verloo 2006: p. 221).

In this study, social identities such as gender, ethnicity and social class will therefore be studied from the perspective of intersectionality. This perspective implies that in transnational marriages gender, ethnicity, and social class are interconnected and intersected, meaning gender can work differently for Moroccan, Egyptian or Dutch women and that class does not necessarily work the same for Dutch men and women.

1.4.5 Legal consciousness

To understand how people divorced from a transnational marriage talk about the law and experience the law in their everyday lives, I will make use of the concept of legal consciousness. Legal consciousness is a popular topic of research, especially in American Law & Society studies (e.g.: Barton 2004; Conley & O'Barr 1990, 1998; Cowan 2004; Ewick & Silbey 1998; García-Villegas 2003; Hertogh 2004; Hirsch 1998; Merry 1990, 2003; Mertz 1992; Nielsen 2000; Sarat & Felstiner 1989; De Groot-van Leeuwen 2005). However, not all of these studies explicitly use the concept of legal consciousness or use it in the same way. According to Hertogh (2004), there is a difference between American and European conceptions of legal consciousness. American conceptions of legal consciousness concentrate on the experiences of ordinary people with official law, while European conceptions of legal consciousness aim to assess what people perceive as law (Hertogh 2004, p. 457). Because I aim to study the way spouses in transnational marriages handle formal state laws relating to marriage and divorce, I use the concept of legal consciousness to describe the knowledge and image people have of the law and how this affects the way they act. This means that I will lean more to the American than the European conception of legal consciousness. Legal consciousness is not only the way people think about the law but also the way this unconsciously influences decisions (Nielsen 2000, p. 1058). It is 'the ways people understand and use law', not only in conscious actions but also in habits (Merry 1990: p. 5). Legal consciousness is not static but changing from one situation to another. It is shaped by experience, which is connected to the social position of people (Nielsen 2000: p. 1087), meaning it can be connected to gender, social class and ethnicity as well as migration.

According to Sarat and Felstiner, a divorce, besides the breaking up of a marriage, often also implies the first introduction of the participants to the legal system (Sarat & Felstiner 1995, p. 1-4). Moreover, for members of Dutch-Egyptian and Dutch-Moroccan transnational families, a divorce can be the first introduction to a *foreign* legal system, the rules, language and morals of which can be quite different from the system in their country of origin. Another interesting aspect of legal consciousness in transnational divorce processes is the connection with at least *two* legal systems instead of just one, as in most previous studies. It is therefore important to

distinguish between the different family law systems. Interviewees may have a different image and knowledge of Dutch and Moroccan or Egyptian family law.

In court procedures, legal consciousness can be seen as an asset. Certain forms of legal consciousness can be more successful in court than others, for example because they provide better understanding for the judge. Moreover, people with a negative image of a legal system are unlikely to turn to that legal system for help, even if they would be better off than in another legal system. A negative image of courts can also lessen the willingness to litigate, thus weakening the bargaining position in private ordering. In addition, knowledge of certain legal rules and the possibilities and constraints of a court or legal system can help in devising an effective strategy to obtain a certain goal. The framing of disputes is of great importance in these contexts. Before people take their problems and conflicts to court, one of the parties first has to define the problem as the kind of problem a court can help with. They also need a – legal – consciousness that courts can be of help in their situation (Merry 1990, p. 37).

Merry distinguishes three different discourses in her study on working-class Americans; a legal, moral, and a therapeutic discourse. The use of these different discourses is linked to social status aspects such as gender, ethnicity and social class. She found that, while men tended to use more legal discourse, women used more therapeutic discourse. In court cases on marital problems, moral discourses of guilt and obligations in relationships were used most often (Merry 1990, p. 112). Before people come to court, they have often already framed their problem in a certain discourse, which is most of the time a legal discourse. If a certain discourse is unsuccessful, people may try to switch to another discourse. In Merry's study, judges, mediators and court clerks tended to reframe legal claims into moral or therapeutic discourse, depending on the case, but litigants can try to resist this reframing. (Merry 1990, p. 112-115). Sarat and Felstiner (1995) have also described the use of moral discourse in their study on the interaction between clients and lawyers in divorce cases. Many clients try to get the lawyer to take over their interpretation of guilt in the ending of the marriage. However, in a context of no-fault-divorce, talk of guilt or fault is not relevant, and therefore mostly ignored by lawyers (Sarat & Felstiner 1995, p. 26-42).[6] The Netherlands since 1971, Morocco after 2004, and to some extent Egypt after 2000 have all introduced no-fault divorce forms. A question could be what space divorce procedures in all three countries provide for the discussion of fault, including for example domestic violence.

Legal consciousness can be divided into several types. In this study I will use Merry's (1986; 1990) division of legal consciousness in two ideologies: 'formal justice' and 'situational justice'.[7] While the first is more connected to the dominant political ideology, the second is a bottom-up perspective. Merry defines formal justice as:

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6 For an elaborate discussion of Egyptian judges introducing fault-based aspects into no-fault khul'-divorce see: Sonneveld 2009, p. 118-132.

7 Another classification was made by Ewick and Silbey. They introduced three types of legality 'before the law', 'with the law' and 'up against the law' (Ewick & Silbey 1998).

> Working-class court users typically see themselves endowed with a broad set of legal rights, loosely defined, which shade into moral rights. These rights are part of the symbolic system by which obligations between neighbors, friends, and family mem-bers are understood. [...] These rights are routinely enforced by the state through a system of police and courts that are accessible to all. The state takes infractions of the legal rights of its citizens seriously. To be accused of a violation of the law is a serious and frightening event, and to make accusations of others is to invoke a powerful weapon. The court itself is regarded with awe and fear and a court appearance is a scary experience. In this ideology, persons are legally defined as equals and enforcement is predictable and firm. (Merry 1986, p. 257)

Situational justice leaves this presumption of the universal and equal rights of citizens. Instead:

> In the ideology of situational justice, the person is socially constructed by his or her history, character, rank, and social or ethnic identity. Behavior is judged in terms of customary standards presumed to exist for such persons. [...] The second difference between this ideology and the ideology of formal justice concerns the nature of enforcement. Instead of flowing inevitably from a violation of the law, enforcement is viewed as dependent on the social identities of the parties and their relationship. The law is a set of rules that are enforced partially and only when someone complains. Interpersonal disputes are not seen as real 'crimes' but as less important, 'garbage' cases because of their social context. Enforcement can be manipulated depending on how the problem is presented. (Merry 1986, p. 258)

While formal justice is based on a political view of the legal system, the formal perspective, removed from knowledge of any specific laws; situational justice is a perspective acquired by experience on how the informal side of the court works. It takes into account the mobilisation of laws. However, both discourses are equally reflecting 'a kind of truth about how the legal system works' (Merry 1986: p. 258). In this study on transnational marriages, these two forms of ideologies will be used to understand how spouses speak about their experiences with and expectations of the legal system in the interviews.

1.5 Research methods and sources

This ethnographic research project has been based on three main sources; (1) the analysis of texts, both legal and non-legal, (2) the interviews with spouses divorced from transnational Dutch-Moroccan and Dutch-Egyptian marriages and (3) interviews and participant observation with all kinds of organisations and actors involved professionally in transnational divorce. Most material was gathered during fieldwork in the Netherlands (2008-2012), Egypt (November 2010-January 2011) and Morocco (September-December 2009, May 2011). During the fieldwork in Egypt and Morocco I received support from the Dutch institutes in Cairo (NVIC) and Rabat (NIMAR).

This research project on divorce was part of a NWO-funded research program entitled 'transnational families between Dutch and Islamic family law', coordinated by prof. B. de Hart. Two other research projects were part of this program: on the legal relationships between parents and children (Kulk 2013); and on transnational custody disputes and international child abduction (Carlisle, forthcoming).

1.5.1 Texts and talk – studying law as an anthropologist

Legal texts and other documents were an important source for this study. When describing and analysing Moroccan family law I mainly used the (unofficial) English translation of the *Moudawana* by HREA, in addition to the official Arabic version and its French translation, and the Dutch translation (Berger 2004).[8] The main source for the interaction of Dutch and Moroccan family law was the dissertation of Jordens-Cotran (Jordens-Cotran 2007). Both the Dutch translation of the *Moudawana* and the work of Jordens-Cotran are also used in Dutch courts. When describing and analysing Egyptian family law I used the original Arabic text of laws and the English translation made by el-Alami of law no. 100 of 1985 (El-Alami 1994). For Dutch law, judgments and parliamentary discussions I always used the original texts and translated them into English myself.[9] Because of differences in legal culture, legal terms did not always translate easily into English. However, I did not only use these (legal) texts to answer research questions about actual law. They are also a valuable source to study concepts and ideas about the family, gender, migration and other important themes for this research. I analysed law books and commentaries, jurisprudence, parliamentary debates – especially the preambles of laws – but also brochures, websites, information booklets, and reports of meetings.

In my textual analysis I made use of the ideas of Verloo and Lombardo who developed the method of Critical Frame Analysis for gender equality policy frames in the European Union (Verloo & Lombardo 2007). Critical frame analysis is an in-depth analysis that, through close reading using 'sensitizing questions' in mapping frames, reveals inconsistencies and exclusions (Verloo & Lombardo 2007, p. 31-41). It is a very useful method when used to analyse shifting meanings of open concepts like 'gender equality' but also, in this study, 'the best interest of the child' or 'Islamic family law'.[10]

During this research project, I struggled with studying law, for which I had no formal training. Being daunted at first by the prospect of reading actual law, I started by reading manuals, and asking experts about the law. At first I was surprised when doing interviews at the court that even judges look up specific legal information before handling a court case. Gradually I learned that being a lawyer is mostly about

8 Human Rights Education Associates (HREA) provides an unofficial English translation of the 2004 Moudawana, 'prepared by a team of English and Arabic speaking lawyers and a professional Arabic-English Moroccan translator at the Global Rights head Office in Washington and their field Office in Morocco', http://www.hrea.org/moudawana.html, accessed on the 22 April 2013.

9 Accessible through www.overheid.nl and www.rechtspraak.nl.

10 In this text, I use the terms 'discourse' and 'frame' interchangeably.

knowing how and where to find and interpret law. Without understanding this basic principle, a lot of information gets lost in interviews. While interviews and discussions with lawyers were indispensable in finding and navigating applicable legal texts, it turned out that interviewing lawyers without reading law, or reading social science literature containing legal information solely based on such interviews, often produces an incomplete or incorrect picture, as so much information is 'lost in translation'. Especially in the complex field of transnational marriages, where many exceptions and obscure rules apply, studying the original texts is crucial for a full understanding of the law. On the other hand, interviewing lawyers and judges in addition to reading legal texts provided valuable information on the implementation of laws and about the everyday working of the courts and interactions with divorcing spouses.

With the invaluable help of my colleague Friso Kulk and his ever-growing collection of Arabic-language law books, I learned to navigate legal texts: law books but also dissertations, commentaries and jurisprudence which enabled me to write the parts about law. Dutch law and jurisprudence are easily accessible through the internet, which also holds true for the Moroccan *Moudawana.* Egyptian family law is a more complicated matter. It is only published on paper and mostly only in Arabic and not completely codified. For example, only after a remark in a newspaper article, I found out that the age limit for *hadana* (child custody) had been raised in 2005. None of the law books I bought in Cairo in 2011 as being 'the newest versions' included this reform, nor was it mentioned by any of my informants.[11] Moreover, not every legal provision regulating transnational marriage and divorce can be found in family law; they can also be located in, for example, the law on civil registry. In this book, I present a picture of the law to the best of my abilities. However, I am trained as an anthropologist, not as a lawyer, and this dissertation is not a legal manual or a source of law.[12] I may have missed things, made mistakes, and laws and legal practice may change. Furthermore, the law I describe in this book covers only the main points, it does not cover every possible (or impossible) case.

1.5.2 Interviews with divorced spouses – the sample

In total, I interviewed 26 spouses divorced from transnational marriages, five men and 21 women.[13] This sample includes 11 spouses divorced from Dutch-Egyptian marriages and 15 from Dutch-Moroccan marriages. There were 13 native Dutch spouses, nine Moroccan spouses, two Egyptians and two Dutch-Moroccans. 17 marriages were mixed, nine were migration marriages. When quoted in the text, interviewees will be described by their gender, country of origin – in order to distinguish between Dutch and Egyptian or Moroccan partners and between mixed and migra-

11 It must be noted that I did my interviews just before the revolution in early 2011. As has been described by Lindbekk & Sonneveld (forthcoming), child custody and visitation laws have since become a matter of much public debate.

12 For a further discussion of my personal position as a researcher, see chapter 2.

13 A 27th interview with an Egyptian man divorced from a Dutch woman was aborted after 10 minutes and never continued, and has thus been excluded from the analysis.

tion marriages – and country of residence *during* the marriage. To prevent recognition and to protect the privacy of interviewees, all names and sometimes also other identifying details have been changed or omitted. Spouses born or raised in the Netherlands with Moroccan or Egyptian migrant parents will be described as Dutch-Moroccan or Dutch-Egyptian, as their background is important for this research, all others will be described as 'Dutch', 'Moroccan' or 'Egyptian' if they have grown up in the Netherlands, Morocco or Egypt respectively. It is important to note that these are not unified categories, and they contain people from a diversity of backgrounds and self-identifications, such as Moroccan Berbers and Arabs; Egyptians of European origin and Bedouins; Dutch originally from former colonies such as Suriname or Indonesia and other migrant backgrounds. As will be discussed in chapter three, the diverse categories of Dutch, Egyptian and Moroccan interviewees can also contain people of multiple nationalities, especially after migration. To protect the privacy of the interviewees I will only refer to their ethnic background or nationality other than being raised in the Netherlands, Morocco or Egypt when it is important to understand their stories.

Participants in this research were selected based on several criteria. First of all, eligible respondents had to be divorced or divorcing from a legal, transnational, heterosexual marriage to make comparison possible.[14] Secondly, to make the marriage transnational, one partner had to be raised – meaning having been born in or as a child having migrated to – the Netherlands, the other had to be raised in Morocco or Egypt. This definition includes both Dutch natives as well as second generation migrants marrying a partner from their country of origin. I aimed to include equal numbers of mixed and migration marriages, women and men. Thirdly, I aimed to exclude cases of so-called international child abduction. In the larger research project of which this dissertation forms a part child abduction and transnational custody disputes were a separate research project, carried out by dr. Jessica Carlisle. Due to agreements on the demarcation between the projects, I have tried to avoid cases involving (allegations of) international parental child abduction and have not included the topic in the topic list for the interviews.

Even though I have sought to keep to these three criteria in selecting interview candidates for this study, this did not always work. When making an initial appointment for the interview, I relied on the interviewee's self-identification as a part of the research group. For example, sometimes I only found out during the interview that there had been (allegations of) international child abduction (three cases), that the respondent had never been legally married (two cases) or that the divorce had not yet been processed by the court. I have chosen not to exclude these interviews from the sample. The interviewees were of widely different backgrounds regarding age, ranging from early twenties to late seventies, education and social class. They were also in

14 Homosexual marriages exist only in the Netherlands and not in Egypt or Morocco, and they have thus been excluded for the sake of comparison. Legal marriage included both formal, state-recognised marriages as well as informal marriages which are (potentially) legally valid, such as Egyptian 'urfi-marriages.

different stages of the divorce process, some did not even start a formal divorce procedure yet while the oldest divorce was finalised over 20 years ago. In all cases, only one partner of a former transnational couple was interviewed, to permit interviewees to speak freely and to avoid the researcher becoming part of a conflict.

Even though the interviews provided me with very rich research material, finding enough people divorced from transnational marriages turned out to be the main, and sometimes frustrating, difficulty of this research project. I approached respondents in a variety of ways. First of all, in approaching possible respondents, I made use of my own networks and those of my colleagues, family, and friends. Secondly, throughout the research I contacted organisations, such as NGO's and social networks, migrant organisations, *bureau inburgering*, translators, the embassies and specialised lawyers.[15] I specifically asked all of these organisations for help in finding men divorced from transnational marriages. Especially the SSR office in Berkane was a great help in finding and contacting potential interviewees in Morocco. I found most of the Moroccan interviewees through their interposition. Thirdly, a general call for all three research projects was made, published and spread through relevant mailings lists, websites of organisations, and internet forums. Fourthly, I approached the lawyers of recent published court cases of Dutch-Moroccan and Dutch-Egyptian divorces.[16] To increase the number of male respondents, I generally approached the lawyer of the husband. In a similar way, I found some interviewees through internet forums by directly approaching members asking questions or sharing stories related to transnational divorce.[17] Lastly, I tried to come into contact with groups of people who may know spouses divorced from transnational marriages, such as students of Arabic Language and Culture. In Morocco and Egypt, I also spent time at locations and events relevant to Dutch nationals living there: such as visiting the 'Orange café' in Hurghada, activities and lectures of the Dutch institutes in Rabat and Cairo, and volunteering at the annual Sinterklaas celebration of the Dutch embassy in Morocco. Apart from meeting possible interviewees, hanging around at such locations also presented valuable opportunities for small talk (Driessen & Jansen 2013).

Interestingly, snowball sampling turned out to be of little use when finding new respondents, most respondents claimed not to know anyone else who had divorced from a transnational marriage. While the lack of snowball sampling might be explained by the controversial subject, I also believe that it can be related to the social consequences of divorce. Social networks of the marriage may lessen or be lost after a divorce, especially if a transnational divorce involves return migration. Furthermore,

15 Bureaus Inburgering or integration bureaus handling the obligatory courses in Dutch language and culture for new migrants.

16 A selection of Dutch court cases are published on the website rechtspraak.nl. While the names of the parties have been erased to protect privacy, the names of the lawyers remain visible. In family law, rechtspraak.nl publishes mostly cases from appeal courts, which are generally high-conflict or otherwise 'special' cases. For selection criteria see: http://www.rechtspraak.nl/Uitspraken-en-Registers/Uitspraken/Selectiecriteria/Pages/default.aspx, accessed on the 9th of July 2013.

17 Especially the forum of stichting buitenlandse partner http://www.buitenlandsepartner.nl/forum.php and the forum for Dutch living in Egypt: http://www.egypte-forum.nl/wonen/.

after divorce, former spouses in mixed couples lose their visibility as being part of a mixed couple. This lack of snowball sampling means that almost all of the respondents came from different social networks and they did not know each other.

1.5.3 The interviews

In the interviews with divorced spouses, an 'interview guide' was used to ensure that no relevant topics were missed, while enabling participants to tell their story in their own way and order. Most interviews started with an open invitation to the respondent to tell the story of the relationship and divorce, generally with the question: 'how did you meet your former spouse?' In order to answer questions about the role of law in everyday life, it is important that respondents are free to mention or not mention legal issues. In their research on law in everyday life, Ewick and Silbey:

> [...] did not directly ask about law; they asked about people's lives and waited to hear when the law emerged, or did not emerge, in the accounts people provided of an enormous array of topics and events that might pose problems or become matters of concern or conflict. [...] The method did not assume the importance or centrality of law, although the object of the analysis was to create an account of hegemonic legality. It was simply the target of the research, the analysts' construction of the research problem. Thus, the work focused on everyday life, did not adopt a law-first perspective, and waited to see if, when, and how legal concepts, constructs, or interpretations emerged. (Silbey 2005: p. 347-348)

In this research, I maintained a similar approach by letting people tell the story of the relationship, a story that has often been told before to others, although the subject of the research was mentioned when making an appointment for an interview. The stories interviewees told were not always easy and included difficult, emotional topics such as domestic violence, loneliness, loss and betrayal. At the end of the interview, after the interviewee was finished telling her or his story, I asked about the legal facts and details about legal procedures. Regularly, the interviewee did not remember the legal details. Some of the interviewees showed documents during the interview and, in a few cases, gave or sent copies to me afterwards. This approach did not work in all cases; some interviewees, who had been frustrated by prolonged legal procedures against their former spouse, started telling about legal procedures before I had the chance to ask any questions about their relationship.

The interviews were held in the best common language of researcher and interviewee. In most cases this was Dutch, sometimes mixed with English, French or Moroccan or Egyptian Arabic. Two interviews were held in a mixture of French and (Moroccan) Arabic. In two other interviews taking place in the North-East of Morocco I made use of a local teacher of Dutch as a translator. All but two interviews were done in person. Two interviewees were not available for an interview in person and I interviewed them by phone or using Skype.

The interviews lasted between 40 minutes and four hours, with an average of 1.5-2 hours. Most interviews were tape-recorded and transcribed and were sent to the

interviewee for correction. If the interviewee did not consent in tape-recording, notes were made during the interview. After the interview, most interviewed spouses were given the opportunity to react or edit their stories, and only a few did so. I made use of Atlas TI to facilitate the organisation and analysis of the research material.

1.5.4 Interviews with professional actors and courts

In addition to the interviews with divorcees, members of interest groups, migrant organisations, NGOs, social workers, lawyers and legal experts in the fields of divorce and transnational relationships were interviewed about their experiences with transnational divorce. Formal semi-structured interviews were held with 34 representatives of 28 organisations involved in transnational divorce, such as NGOs and migrant organisations (11, both in the Netherlands and in Morocco), translators (two), lawyers (six in the Netherlands, two in Morocco and three in Egypt) and the Dutch embassies in Rabat (multiple interviews) and Cairo.[18] I also interviewed officials from the Dutch Ministry of Foreign Affairs. Most interviews were done in person and a few were done using Skype or telephone. Furthermore, a Dutch translator in Egypt and the Egyptian embassy in the Netherlands answered questions by email.[19] I continued to interview new professionals until I reached the point of saturation.

Further information was gathered doing participant observation and informal interviews at meetings related to the topic in both the Netherlands and Morocco. I participated in expert meetings, project presentations and NGO conferences. I joined a group of volunteers being trained to provide education and advice about Moroccan and Turkish family law and observed during consultations of the SSR office in Berkane. I also collected information doing informal interviews and participant observation during contacts with Dutch and other Europeans living in Egypt or Morocco and by participating in an internet discussion forum for Dutch people in Egypt. I conducted formal and informal interviews with employees of the Dutch institutes in Cairo and Rabat, and I spoke to Dutch journalists living in Morocco and local scholars of family law in the Netherlands and Morocco.

As part of this research project, I intended to observe transnational divorce cases in courts in all three countries. In Morocco, in 2009, my colleague Friso Kulk and I spent considerable time and effort in gaining a research permit and access to Moroccan courts, but we did not succeed. We visited the court in Rabat once and spent some time speaking to court officials and lawyers, but after a while we were sent out of the building. In the Netherlands I did manage to gain access to the court in the Hague. The entire procedure to gain access in the Netherlands took about a year-and-a-half, and it seemed to be just as bureaucratic and complicated as the Moroccan process. It also entailed making use of contacts. If I had been able to spend as much time in Morocco, and had equal access to contacts, I may have managed the same or even better results, whereas I doubt if a foreign researcher with few contacts in the

18 About half of these interviews were held together with my colleague Friso Kulk.

19 These are not counted in the total number of interviews.

Netherlands would have managed to gain the permission of the Dutch *Raad voor de Rechtspraak* or courts. Due to organisational constraints I never managed to witness an actual court case, although I did multiple interviews with one of the family law judges, one lawyer and a divorcee while spending time at the court.[20] After these examples of court bureaucracy I decided not to try again in the Egyptian courts.

1.6 Outline of the book

Chapter 2, *The Contexts of Transnational Divorce*, will provide an introduction to several elements of the contexts of transnational marriages which will be important to understand the stories of transnational marriage and divorce in this research. In this chapter I will outline these contexts, distinguishing between the dimensions of *time*, *place* and *distance*. Subsequently, in chapter 3, *The Legal Context of Divorce*, the law will be central. I will outline and compare marriage and divorce law in all three countries with specific attention for private international law and the position of transnational families.

Chapter 4, *The Transnational Divorce Process*, is the first chapter mainly based on interview material. In this chapter, it is analysed how the interviewees look back on the transnational divorce process, which decisions and steps they took and in which country. The main question will be: how do spouses arrange their transnational divorce, and how does this relate to law in the different legal systems?

Chapter 5, *Marital power and the law*, discusses the power relations between the spouses. Based on the interviews I focus on two main themes, the division of labour in marriage and domestic violence. Domestic violence was an issue in many divorce cases in this research project. Due to shifts in gender roles related to migration, the division of labour is also of specific interest for transnational marriages. I will analyse how both these themes impact the legal procedures in transnational divorce.

In chapter 6, *Taking care of the children. Organising child care after divorce*, the central question is how the couples in this research arranged child care after divorce and how parents related these arrangements to the laws and ideologies of the different legal systems. It will be demonstrated how both the interviewees in this research as well as the three legal systems share a welfare discourse, centring on the best interest of the child. In the interviews, notions about 'good' and 'bad' transnational parenthood played an important role.

Chapter 7, *Financial aspects of divorce*, focuses on issues of maintenance and the division of property. It is argued that Dutch, Moroccan and Egyptian family law regarding the financial effects of marriage and divorce are based on the same ideas and assumptions about the family in gender-based roles of home-maker and breadwinner. However, the three legal systems provide different solutions in arranging the financial

20 The court could only provide me with information about transnational divorce cases a few days beforehand, which never left me enough time to get the required permission of both parties and their lawyers.

consequences of this gender-based division of labour. The main question of this chapter is how spouses handle the financial aspects of divorce, and how this relates to law in the different legal systems.

In chapter 8, *Support in transnational divorce: actors, norms and their influence*, the social environment is central. During the divorce process, divorcing spouses come into contact with all kind of professionals in providing legal or social aid, and they may also receive support and advice from their networks, friends and family. In this chapter I discuss the transnational aspects of support and constraints in divorce cases, distinguishing three types of support: emotional support, practical support and legal aid and information.

In chapter 9, *Conclusions*, I will answer the main question of this study, presenting an analysis of the interactions of family law systems in transnational divorce and the meaning of family law in the everyday life of transnational families; marital power relations and the power of the law; and support by organisations and private networks provide in transnational divorce cases. Lastly, I will reflect on how 'transnational' transnational families actually are and how they are the same as or differ from 'normal', non-transnational families in the three countries.

Chapter 2. The contexts of transnational divorce[1]

2.1 Introduction

To understand and explain some of the stories of spouses on handling law in marriage and divorce, it is necessary to look at the societal and historical contexts in which their marriages and divorces took place. I divide these contexts into *place*, *time*, and *distance*, arguing that differences between the stories of spouses on handling law in marriage and divorce can partly be explained by looking at the contexts in which their marriages and divorces took place. This chapter will provide the information necessary for understanding these contexts. I will set out by discussing the aspect of *place*. The marriages and divorces in this study took place in three countries and in different regions within those countries. These places are distinguished by significant differences with regard to discourses on mixed or migration marriages and perceptions of the Other, but also in practical opportunities for transnational couples. Discourses and practical opportunities also change over *time*, retelling a history of Moroccan and Egyptian migration to the Netherlands and legal measures taken to limit marriage migration. Discourses on mixed and migration marriages shift over time, as do legal rules and regulations. As the transnational marriages and divorces in this research took place between the 1960s and 2012, time has had a different influence on different spouses.

Partly as a result of the first two contexts, place and time, the physical, social and cultural *distance* between the spouses in a transnational marriage can vary, forming the third context in which spouses in transnational marriages handle law during marriage and divorce. This distance informs the main distinction between mixed and migration marriages. Lastly, I will discuss the context in which this research project took place and my personal position as a researcher. The legal context of marriage and divorce in all three countries will be described in the next chapter, including an overview of the history of family law with regard to marriage and divorce.

2.2 Place

The transnational marriages in this research took place in different countries and places, each with its own specific circumstances relevant for transnational marriages and divorces. Place is the first relevant context. Place first of all is important because of its practical dimension. For example, due to the migration flows from Morocco to the Netherlands, there is a certain migrant infrastructure and existing migrant networks available for Moroccan migrants in the Netherlands which are not present for Dutch migrants in Morocco and only partially for Dutch-Egyptian divorces. Secondly, each place also has its own discourses and ideas about transnational marriages.

1 Some parts of this chapter have been published in Sportel, forthcoming.

As we will see in subsequent chapters, the way people frame their marriage has an influence on how they talk about the legal aspects of that marriage. The three countries in this research of course each have their own history, culture, social structures and legal systems. These differences are not just present between the countries but also between places within these countries, for example between the capital and more remote regions. A specific place relevant for this research is Egyptian beach resorts, where transnational marriages take place in a context different from those in the capital, Cairo. Below, I will discuss the three countries and outline the national and local contexts of Dutch-Moroccan and Dutch-Egyptian migration, focusing on those local aspects that have been of specific importance for the transnational couples in this study.

2.2.1 Egypt

Transnational marriages between the Netherlands and Egypt mostly consist of mixed marriages. These take place in two distinct places. First of all there are so-called 'beach marriages', couples who met in Egypt's tourist industry. Egypt is a major tourist destination for European tourists, some of whom stay after they have met an Egyptian partner. Some Dutch migrants and mixed couples have also found work or started businesses in the tourist industry. European mass tourism to Egypt started already in the late 1860s, when Thomas Cook introduced package deal tours to the Middle East. The Suez Canal also provided Egypt with many foreign visitors. Although tourism suffered from the 1967 war with Israel, numbers of European and American tourists steadily rose, especially after liberalisations by Sadat in the late 1960s and early 1970s (Gray 1998, p. 92-95). In 2010, the number of arrivals in Egypt was over 14 million.[2] Meanwhile, the rest of Egypt's economy declined, and the state failed in providing work for Egypt's young population, with many young men now struggling to earn enough money to be able to meet the social requirements for marriage (Abdalla 2004, p. 30-39). The immense growth of the Egyptian tourist industry thus attracted young, unemployed males from all over Egypt to come and work in resort cities like Hurghada or Sharm al-Sheikh, outside their social environment and away from the control and support of their families. The Egyptian press describes 'beach marriages' between Egyptian men and foreign women as forms of prostitution, degrading Egyptian society (see: Abaza 2001). In his research on mixed relationships in Dahab, on the Red Sea Coast, Abdalla (2004) found how Egyptian men conduct *'urfi* marriages with foreign women as 'a survival strategy to overcome poverty and to legitimize sexual relationships' to protect themselves from intense policing and even harassment by the Egyptian police of unmarried mixed couples (Abdalla 2004, p. 31, 45-47). In the discourse of the Egyptian men Abdalla interviewed, the western women they marry are on the one hand falling short of western beauty standards and thus cannot find husbands in their own country and, on the other hand, attracted by the 'real masculinity of Egyptian men', which European men fail to offer (Abdalla

2 World Tourism Organization UNWTO.

2004, p. 35-36). The Egyptian husbands depend on these relationships financially, and they hope one day to find a wife that will enable them to settle in Europe and are disappointed time and again when their wives leave them and return to Europe (Abdalla 2004: p. 40-45).

Similarly, among Europeans living in Egypt, the tourist marriages are infamous for what the Dutch Noor Stevens has called *Bezness*. In her book *Kus kus, Bezness* she tells the story of her marriage to an Egyptian husband.[3] The marriage started happily but ended with violence and exploitation. She now uses her experiences to help other 'victims' through her own organisation, *Bezness alert*, also aiming to raise awareness by appearing frequently in the Dutch and Belgian media. On her website, she describes the issue of *Bezness* as:

> [*Bezness*] means an impersonation of love in order to gain financially and/or to gain a residence permit/passport by way of emotional blackmail and manipulation. In the tourist areas of Bezznes-countries like Egypt, Tunesia, Turkey and the Caribbean this has become a true industry. There are enough women and men who underestimate the cultural difference, and fall for sweet talk (because they're adept liars). Swindle is universal, but the rights of foreigners are in a completely different legal system entirely obscure. [...] The illusion of 'real love' turns out to be 'one-sided love', but often too late. [...] There are many forms of *Bezness*, but one thing is certain: men/women working in the tourist industry are almost always part of that group '*Bezness*'. (http://www.Beznessalert.com/eng/what_is_Bezness.html, accessed on 23 November 2011)

In this discourse, western women, who could be considered more powerful with regard to financial means, mobility, race, and social class (Walby 2010, p. 43-44), become powerless victims because they fall in love, something they must be warned about. Moreover, the 'completely different legal system' in these countries is referred to as a further threat, obscuring the rights of foreigners which adds to the 'othering' of these relations and the Egyptian legal system.

During my fieldwork in Egypt, many referred to this practice.[4] Almost everyone I spoke to came up with stories about lonely middle-aged Western women having informal *`urfi* marriages with much younger Egyptian men, financial exploitation and violence. These women were generally portrayed as the slightly stupid and sad victims of the cunning Egyptian men they loved, for example:

> Your last question with regard to giving information: Yes, I still sporadically do that, but mostly it's negative, so in the sense that I tell them they should know what they are letting themselves in for, and I often also lend them the book 'Grenzeloze liefde'[5] and refer them to

3 Stevens & Tardio 2011.

4 They did all not use the term Bezness, however. Noor Stevens' book had not yet been published when I did my Egyptian fieldwork. More research would be necessary to assess its reception by and impact on the Dutch community in Egypt.

5 Rozema 2005).

> the article by Alexander.[6] Often they jump out of their skin, but others keep thinking that their Ahmed or Mohamed, etc., really is different, unfortunately that generally is a miscalculation, but then it's usually too late…..
>
> Like I always say: 'look before you leap', because here it is a kind of industry to 'get hold' of Western women, sometimes even next to a marriage with an Egyptian wife…
> (Dutch woman living in Egypt, key member in a local network of Dutch women, January 2011, by email, punctuation as in original)

In the concept of *Bezness*, the 'true love' of the European women is sadly abused by Egyptian men, who have much to gain financially from this marriage. The Egyptian men, on the other hand, keep being disappointed when their foreign wives return to their countries of origin and leave them behind. In this discourse it is only the men for whom this is a 'false' marriage, as they apparently do not love their partners back. Thus, true love and material gain are framed as mutually exclusive, the first a proper and the second an improper reason for marriage. The Egyptian men are supposedly only interested in the marriage because of money, a visa, or sometimes sex. Dutch women in relationships with Egyptian men are therefore sometimes advised to deliberately take away these gains from the relationship, as a kind of test to see if his intentions are 'pure', i.e. love. Interestingly, at a *Bezness alert* meeting discussing the needs for mediation and service providing in Egypt, an age distinction was made.[7] At this meeting, it was discussed that older women dating or marrying much younger men should be excluded from using the special services for *Bezness* victims. They should have been smarter and were ridiculed for believing much younger men could really love them. These relationships were instead considered equalled to prostitution, and the women should thus not be able to claim a position of 'real victims'.[8]

However, not all Dutch-Egyptian couples living in Egypt meet on a beach holiday. A second group of couples, living in big cities like Cairo, do not necessarily identify themselves with the 'beach marriages'. Some of these couples have met abroad, in the Netherlands or elsewhere, for example during their studies. Some Dutch wives also came to Egypt for work or business and met their future husband as business associates or in the international nightlife of Cairo. These differences between these two places, Cairo and other Egyptian big cities and the resort towns and tourist areas also have a class dimension. The couples that met in the tourist industry, and especially those who have conducted informal *'urfi*-marriages, are looked down upon by those living in Cairo. Informal marriages have often been described to me as a 'license to fuck' or a 'prostitute's contract' by Egyptians as well as Europeans living in Egypt and even a by a lawyer who makes such contracts. In these marriages, the

6 *NRC Handelsblad*, Uitgekleed en kaalgeplukt. Reportage badplaats aan de Rode Zee', by Alexander Weisink, 29 August 2009.

7 31 March 2012.

8 This portrayal of middle-aged women having affairs with younger men who profit financially from the relationship as 'stupid' has also been noted by other authors, including Walby 2010 and Jacobs 2010.

Egyptian husbands were generally poor, or at least less wealthy than their Dutch wives, and sometimes also younger, which invites allegations of *Bezness*. The Dutch-Egyptian couples living in Cairo on the other hand were more often Dutch women having married Egyptian husbands from wealthy, internationally-oriented families and of the same age or slightly older than their wives.

2.2.2 Morocco

Morocco is one of the largest emigration countries in the world and the fourth largest remittance receiver in the developing world, with almost three million of the 30 million Moroccans officially living in European countries. Migration between the Netherlands and Morocco has, for a significant part, been from specific regions in Morocco, especially the North-East Rif and the oases located southeast of the High Atlas mountain regions (de Haas 2007: p. 7-8). In those regions, many families have connections to the Netherlands and other European countries. The children of the first generation of Moroccans residing abroad have to some extent concluded endogamous marriages, among their own kin or to people from the same village or region, forming migrant networks. Due to the level of migration and return migration from specific regions in Morocco, certain services have developed, catering to these migrants. In Berkane as well as Tétouan, both in North-Morocco, there are legal aid offices aimed at Moroccans with connections to the Netherlands. In and around Berkane, multiple language schools exist for potential Moroccan marriage migrants where they can learn Dutch to pass the obligatory language and knowledge about society test. The *Stichting Steun Remigranten*, an NGO in Berkane also organised special classes about Dutch society, migration law and rights of women in the Netherlands in some of these courses.

Most migration from Morocco to the Netherlands is from the poorer, more peripheral regions of Morocco, with a mostly Berber-speaking population and with a long history of resistance to central power. The Moroccan government had certain political motives to stimulate migration from these areas (De Haas 2007: p. 10). The difference between the main cities of Casablanca and Rabat, where French and Arabic is spoken, and the rural periphery is described by interviewees as large. One Moroccan interviewee from Casablanca described her experiences when first coming to the Netherlands and trying to find a job as a teacher of Arabic for Dutch-Moroccan school children:

> I don't get it. That attitude. I don't get it. Because I was dressed rather modernly. I had long hair and was I wearing it loose. Then the director [of the school she was applying to] said to me: 'well, those are Moroccans'. And he pointed out a number of Moroccans. I said: 'if those are Moroccans I'm not Moroccan'. Because I did not know such people in my own country. They are a type of people very different from those I'm used to living with. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

Similarly, a Dutch woman divorced from a Moroccan husband described her experiences with her Moroccan husband and in-laws:

> They're not traditional Moroccans. They never demanded that I should, for example, convert to Islam, or how we should live our lives. [...] I mean, they're people from the Capital, with a background very different from people from some village in the Rif. (Claudia, Dutch woman divorced from Moroccan husband, living in the Netherlands)

Similar to the Dutch-Egyptian couples living in Cairo, this interviewee describes her husband and family-in-law as highly educated and internationally oriented, and their life together as wealthy and full of international and expat contacts, distancing herself from the other, ordinary Moroccans in the rural Rif region. The difference thus seems to be more than just regional, but it also contains elements of social class.

Like Egypt, Morocco is a tourist destination, but on a smaller scale, and tourism makes a less important contribution to Morocco's economy. It is a fast-growing sector, with the number of tourist arrivals doubling between 2004 and 2011 from four to eight million.[9] The number of Dutch living in Morocco is relatively small. The Dutch embassy estimates that around 600 Dutch nationals live in Morocco, including those with double nationality. It is a small and not very well organised group, missing the meeting points the Dutch community in Egypt has.

2.2.3 The Netherlands

Moroccans are among the largest groups of migrants in the Netherlands, together with Turkish immigrants. Nearly all are Muslim. In early 2013 there were 368,838 persons of Moroccan descent living in the Netherlands. Of this group 168,117 were born in Morocco, the rest are so-called second generation migrants, the majority of whom have two parents that were born abroad (CBS Statline, accessed on 26 May 2013). In 2013, the Netherlands had a total population of 16,779,575. There is a well-established immigrant community, and substantial amounts of information and social and legal aid are available on, for example, Moroccan family law in the Netherlands (see for a more elaborate discussion: Sportel 2011). Egyptians, on the other hand, are a much smaller and less visible group, with 21,373 people of Egyptian origin living in the Netherlands in 2012. 12,031 were born in Egypt (first-generation migrants), 4,441 have two parents that were born abroad and 4,901 are children of one Egyptian parent and one Dutch parent (CBS Staline).[10] Around two thirds of Egyptians living in the Netherlands are Muslims, and one third Coptic Christians.[11] Most Egyptian migrants are men, often married to Dutch or foreign women. The majority of the

9 World travel and Tourist Council 2013, p. 5.

10 Both are counted as second-generation migrants.

11 It is estimated that around 10% of people living in Egypt are Christians (Zuijdgeest 2005, p. 15), meaning Coptic Christians are overrepresented in the Netherlands.

smaller number of Egyptian women migrated to the Netherlands for reasons of family reunification (Zuijdgeest 2005, p. 14-15).

An issue which has a prominent presence in Dutch discourses on transnational marriages is the issue of marriage as a way of exploitation or gain for one of the partners. Economic and social differences between the Netherlands on the one hand and Egypt and Morocco on the other hand can raise questions with regard to the intentions of the Moroccan or Egyptian spouse. In Dutch society, as well as policy making, a 'romantic ideal of marriage' is dominant (De Hart 2003, p. 127-129). De Hart describes how Dutch civil servants, involved in executing immigration policies on marriages of convenience separate 'real' marriages from marriages of convenience. A real marriage is solely based on love, without any other motives involved and between similar partners (de Hart 2003: p. 127-129). When other benefits, such as a residence permit, are involved in transnational Dutch-Moroccan or Dutch-Egyptian marriages this makes these marriages easily suspect.

In the following chapters, I will refer to the place of living during the marriage for each interview. For couples aiming to live in the Netherlands during their marriage, migration laws and policies are often a major part of their experience with Dutch law and may prevent a couple from living together altogether. Also in the Netherlands, the recent negative discourse on immigration and Muslims, especially those of Moroccan origin, can colour the expectations of a couple and the reactions of their social environment. These discourses and policies have strongly shifted in the last 30 years, paralleling developments in Moroccan marriage migration to the Netherlands. This element of time will be the topic of the next paragraph.

2.3 Time and history

2.3.1 Introduction

There is a wide diversity between the respondents in this research with regard to the moment of marriage or divorce, meaning that some of the spouses first met in the 1960s or 1970s whereas others got married up to 2008. Some of the marriages have lasted for decades, others only a few months. Some respondents divorced in the 1980s; others had not yet finalised the divorce at the moment of the interview. The experiences of the interviewees with transnational marriage and divorce thus span roughly 50 years. During this time, several shifts have taken place in the social context of mixed and migration marriages and the legal context of migration measures and law, which have had a major impact on many Dutch-Moroccan and Dutch-Egyptian marriages. This impact took place on a practical level, such as migration procedures and limitations, but also on the level of societal discourses and response to transnational marriage and divorce. As will be demonstrated in the empirical chapters 4-8, these shifts and continuities in societal discourses can explain some of the differences between the stories of interviewees, for example with regard to the use of conditions in the marriage contract. Hondius writes in her dissertation on mixed

couples living in the Netherlands that her interviewees themselves also noted that reactions of others to their marriage changed over time (Hondius 1999, p. 277). There have also been shifts with regard to family law; I will discuss those in chapter 3.

I will start by discussing a history of marriage migration to the Netherlands. I will divide this into two phases, partially following Bonjour (2006, 2009) in her discussion of Dutch migration policies. In the Netherlands measures have been taken to influence or limit migration, connected to migration flows especially from Morocco and Turkey. These measures have had a huge impact on the coming about of transnational marriages. Unfortunately, I have only limited sources for Moroccan and Egyptian public discourses and policies on mixed or migrant marriages and nothing specifically on Dutch migrants to Egypt and Morocco.

2.3.2 The history of marriage migration – Guest workers and foreign students

Moroccan migration to the Netherlands started with a demand for foreign workers in the 1960s. Companies started recruiting personnel in Morocco and Turkey, consisting mainly of young men. Initially, their presence was seen as temporary, using the term *guest workers* and settlement in the Netherlands and family reunification was restricted (Bonjour 2006, p. 4-5). Morocco also encouraged the temporary migration of guest workers, hoping they would return with new experiences, knowledge and education to strengthen Morocco's development (De Haas 2007, p. 12-13). During the 1970s, a transition took place. In changing economic circumstances restrictive measures were introduced to limit labour migration, while labour migrants already present could arrange more easily for their women and children to join them in the Netherlands (Bonjour 2006, p. 6-8). Meanwhile, Morocco was hit especially hard by the 1973 oil crisis and at the same time an increasing instable political climate and repression, making many migrants decide 'to stay on the safe, European, side of the Mediterranean' (De Haas 2007, p. 5-6). For the Dutch government this meant an unforeseen shift from labour to settlement migration, from adult men to women and children. However, the guest worker frame remained prominent and ‚due to strong moral objections by Members of Parliament, no new or stricter measures for family reunification were made (Bonjour 2006, p. 6-8).

When it was men who came to the Netherlands for marriage migration, such as the foreign spouses of Dutch women or daughters from the first Moroccan labour migrants who married a spouse from Morocco, these marriages were especially regarded with suspicion. Up to 1979, women bringing a partner from abroad had to deal with stricter regulations than men. Dutch policymakers feared marriages of convenience, by which they meant labour migration disguised as marriage migration. This fear extended when from the beginning of the 1980s, the Social and Cultural Planning Office predicted that especially second generation migrant women would marry a partner from abroad, bringing large numbers of foreign men onto the already overflowing labour market. In 1983 measures were proposed to introduce strict income

demands for second generation migrants wishing to marry a partner from abroad. However, when it turned out that mostly women instead of men came to the Netherlands as marriage migrants, and their number was not as high as expected, the measures were withdrawn shortly after they had been introduced (De Hart 2003, p. 99-119; Hooghiemstra 2003, p. 3-5, 11-19; Bonjour 2006, p. 9).

The first wave of Egyptian migrants to the Netherlands differed from the Moroccan labour migration described above. They form a small and not very well known group of immigrants, starting from the 1970s, after President Sadat made travel to western countries easier. Most of these migrants were highly educated experts, students or political refugees. Many of this first group of Egyptian migrants married Dutch or foreign women. (Zuijdgeest 2005, p. 14-15).

2.3.3 The beginning of the integration issue – minorities' policies

From the 1980s, there was a shift in debates and policies on marriage migration. The continued presence of former labour migrants living in the Netherlands became accepted as a fact, and policy frames shifted from temporary migration to integration in Dutch society and equal rights. A second wave of Egyptian immigrants arriving in the 1980s and 1990s consisted mostly of less educated young men looking for employment and wealth. Many found jobs in cafeterias selling Egyptian fast food and started businesses in this sector.[12] A new minorities approach was taken which, according to Bonjour:

> 'clearly bore the marks of the Dutch political tradition of pluralism. [...] It was explicit and active government policy to grant ethnic minorities room for cultural expression as a group, while formal consultation procedures were set up so their representatives could be involved in the development of policy that concerned them.' (Bonjour 2006, p. 10)

Following these shifts, all kinds of national and local organisations were formed to cater to the needs of the new minorities, including family law issues. Examples of these organisations are the MVVN (Moroccan Women's Association in the Netherlands, 1982), the SSR (Association for the support of return migrants, 1989), SMT (Alliance of Moroccans and Tunisians, 1987). Some of these organisations are still active in the field of transnational divorce and will be further discussed in chapter 8. Some of the older transnational marriages in this research which took place in this period were clearly connected with what they called the 'minority field'.[13] These interviewees were working as language teachers, teaching Dutch to migrants or Arabic to Dutch-Moroccan children, or as social workers with special attention for minorities. No similar organisations were founded for Egyptian migrants in the Netherlands.

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12 This group is therefore sometimes called the kebab-generation" (Zuijdgeest 2005, p. 14)

13 Minderhedenwereldje in Dutch, meaning a network of people and organisations working in the same field of minorities.

In this period, the first texts on Moroccan family law in the Netherlands were published. Concerns about the position of migrant women from Islamic countries (i.e. Morocco and Turkey) in the Netherlands, prompted several legal manuals on the Turkish and Moroccan family law systems, aimed at social workers working in this field. A lot of these handbooks focused on divorce. Some contain a short introduction on Islam and Moroccan society, and most give a detailed explanation of judicial procedures and relevant laws and their consequences and the recognition of Dutch divorces in Morocco or Turkey and Turkish or Moroccan divorces in the Netherlands. They all focus mainly on the position of migrant women married to migrant men in the Netherlands, paying little attention to men or migrants married to native Dutch citizens (e.g.: Berendsen 1989; Bethlehem 1989; Werkgroep Knelpunten in het Nederlands recht voor etnische minderheden 1983; Internationaal Vrouwen Centrum Nijmegen 1988). In 1993 a new official Dutch-Moroccan state-level commission, the *commission mixte*, was established, discussing the legal issues of Moroccan citizens living in the Netherlands and problems of interacting laws, especially with regard to the acknowledgement of Dutch-Moroccan divorces.[14] No such handbooks were written for Dutch-Egyptian divorces.

This focus on cultural and social groups also had consequences for the perspectives on marriage migration. Whereas enabling the original labour migrants to live with their existing families in the Netherlands was considered to benefit their integration in Dutch society, the marriages of their children to spouses from Morocco or Turkey were seen as unwanted. This would bring in new generations of 'underprivileged' migrants. Thus, while family reunification restrictions were lessened during the 1980s for so-called 'first-generation migrants' with residence status and made similar to Dutch nationals, this did not happen for their children in transnational marriages who had to meet higher levels of income requirements before they could bring their partner to the Netherlands (Bonjour 2006, p. 11-12).

2.3.4 'New Realism'

From the 1990s the discourse of respect for multiculturalism and plurality started to lose ground, making room for a harsher, more populist discourse of assimilation and nationalism. Prins and Saharso (2008, 2010) place the beginning of what they call 'new realism' in the early 1990s, when Conservative Liberal (VVD) leader Bolkenstein started the 'national minorities debate' by speaking about fundamental European values like the freedom of speech, tolerance and secularism and rejecting the idea of cultural relativism (Prins & Saharso 2008, p. 366-367). This was followed in 2000 by a famous essay by Paul Scheffer, questioning the compatibility of 'cherishing of one's own identity' and emancipation.[15] He stated that the Dutch elite failed to address the 'Multicultural Drama' that was happening, consisting of large groups of especially Turkish and Moroccan children being behind in school and issues of unemployment,

14 Based on commission documents, obtained from one of the former members.
15 *NRC Handelsblad*, 29 January 2000.

poverty and delinquency among ethnic minorities. He describes a future in which most of the children living in cities will be '*allochtoon*', with large groups of losing and lagging-behind migrants while Dutch elites keep living in a multicultural illusion, using pacifist and compromise strategies and ignoring the experiences of ordinary Dutch citizens. Scheffer blames Islam and Islamic law for a significant part of the problems of migrants, describing its lack of a separation between church and state and the resentment of young second generation Moroccan migrants. He proposes a more assimilation-based model of integration, promoting Dutch language and culture and defending 'liberal democracy' against cultures that do not separate church and state or that treat women and men unequally, condemning for example Dutch police officers wearing headscarves. Although Scheffer also mentions non-Muslim immigrant groups, all his examples are about Islam or Muslims, especially about (Dutch-) Moroccans.

In 2001, after the attacks on the US on the 11th of September, a new populist political movement was introduced by Pim Fortuyn, in which his dislike of Multiculturalism and especially Islam as a 'backward culture' took a prominent place. After Fortuyn's assassination on 6 May 2002, his political party had a huge success in the elections of 15 May 2002. He was heralded as someone giving 'voice' to a large, angry group of White Dutch fearing that foreigner would take over their country, while the left-wing elite (similar to Scheffer's statements) ignored their fears and experiences. Since then, the public discourse of 'new realism' has quickly become mainstream. In this discourse, a backlash against multiculturalism, the politically correct approach of the old left-wing elite should make room for a no-nonsense, frank discussion of the problems of the ordinary people with Muslims living in the Netherlands, leaving behind old taboos like racism (Prins & Saharso 2008, 2010, p. 74-77).

In this highly gendered discourse gender equality and sexuality form a central demarcation line between White Dutch and Muslim migrants. Islamic family law occupies an important place in these debates, with opponents generally using the Arabic term *shari'a*, which has strong connotations of extremism and violence. Following requests from parliament for information, members of the Dutch government ordered research into issues related to Islam and the law. Research was undertaken on topics like *shari'a* courts and alternative dispute resolution for Dutch Muslims (Bakker et al. 2010), forced marriages (Koning & Bartels 2005; Ratia & Walter 2009), informal Islamic marriages (Leun & Leupen 2009) and polygamy (Boele-Woelki, Curry-Summer & Schrama 2009). The connection to debates on the integration of migrants is clear from the selection of the subjects of these research projects, issues which are far removed from the everyday life of most Dutch Muslims.[16]

In the problems and solutions of this discourse, Muslim women have taken centre stage: '[…] Dutch laws and customs particularly conflict with the privileges of immigrant (i.e. Muslim) *men*. Immigrant (i.e. Muslim) *women*, on the other hand, were

16 I would like to thank my colleague, Friso Kulk, for drawing my attention to these research projects as an illustration of the public debate on Islamic family law and its preoccupation with integration issues.

depicted as 'victims' of their own culture, and as having a self-evident interest in their integration into Dutch society' (Prins & Saharso 2008, p. 368). Similarly, Roggeband and Verloo have shown how, as a result of parallel shifts in gender equality policy and policy frames on the integration of ethnic minorities between 1995 and 2005, Muslim women were singled out as a 'group in particular need of emancipation' (Roggeband & Verloo 2007, p. 286). A number of NGOs and women's organisations started targeting Moroccan women living in the Netherlands, often with financial support from local or national governments. Several projects with regard to Moroccan family law were established, especially after the new Moroccan family law of 2004, aiming to educate women about their rights. According to Jordens-Cotran, the Dutch Ministry of Justice even pressured the Moroccan consulates in the Netherlands to put a special condition in all marriage contracts conducted there, the so-called *tamlik*, in order to give women easier access to divorce (Jordens-Cotran 2007, p. 424). More recently, the controversial right-wing politician Geert Wilders of the Freedom party (PVV), in a typical example of the new realism discourse, has called for a ban on the application of *shari'a* by Dutch courts through private international law because of gender inequality.[17] Thus, Islamic family law, and more specifically Moroccan family law, acted as a strong marker of difference in Dutch political debates.

The new realism discourse has had a significant impact on Dutch marriage migration policies. In these policies, migration, and especially second generation Moroccan migrants marrying transnationally to spouses from their parents' country of origin, is seen as threatening social cohesion in the Netherlands and hindering the integration of certain groups (especially Moroccan and Turkish second generation migrants) in Dutch society (Bonjour 2010, p. 302-306). According to Bonjour (2010), in Dutch policy discussions, migrants are both 'the actor and the victim' of this problem (Bonjour 2010, p. 302-306). From the beginning of the 1990s, a new wave of measures followed the publication of reports on the size of family migration. These measures were meant to limit marriage migration from partners of both native Dutch citizens as well as second generation migrants. Laws were enacted with the aim of preventing marriages of convenience. This engendered measures based on distrust. From 1992 foreign documents have to be legalised in order to be usable in the Netherlands, a time-consuming and sometimes expensive procedure for transnational couples. From 1993 onwards stricter income requirements have to be met before the foreign partner gets permission to settle in the Netherlands. In practice, this often meant that the Dutch partner needed to have near fulltime employment, which can be a major obstacle, especially for native Dutch women who tend to work less hours and have less well-paid employment in the Netherlands than men. Second generation migrants also tend to have lower incomes than native Dutch. Moreover, this meant transnational couples in the Netherlands were no longer free to divide paid employment, household tasks and care the way they like. In 2004 the income requirements were made even stricter, and certain exceptions existing in the 1993 rules were abolished (De

17 PVV website, http://www.pvv.nl/index.php/component/content/article/36-geert-wilders/4316-creeping-sharia.html, accessed on 7 August 2012.

Hart 2003, p. 111-119). After a decision from the Court of Justice of the European Union in 2010 (the *Chakroun* case), the Dutch government was forced to lower income requirements to the level of fulltime minimum wage.[18] In 2011, the fees for starting the migration procedure and for residence permits were raised significantly. A first attempt to obtain a residence permit for a partner from Morocco or Egypt cost 1,250 euro. This was lowered in the beginning of 2013, again after a case at the Court of Justice of the European Union, and a subsequent decision of the Council of State in the Netherlands (Strik, De Hart & Nissen 2013, p. 69-70).

In 2012, the Dutch government introduced further restraints on marriage and family migration. These included a prolonged dependent residency for the foreign spouse (from three to five years) and marriage or the equivalent of registered partnership as an official requirement for spousal migration. All these measures supposedly should stimulate integration and stop the migration chain, as well as prevent marriages of convenience:

> In family migration a chain of migration can come into being, in which in every new generation new partners, children and other family members come to the Netherlands from the country of origin, with all the socially negative consequences that entails for the process of integration, which gets delayed time and again. When continually admitting underprivileged family migrants, Dutch government policies for labour market and education get under increasingly heavy pressure. The aim of the government is to realise an aspiration that people who come to the Netherlands for permanent settlement have a good chance of successfully integrating and participating in the society, for generations. (Nota van Toelichting, Besluit van 27 maart 2012 tot wijziging van het Vreemdelingenbesluit 2000, het Besluit modern migratiebeleid en het Besluit inburgering (aanscherping eisen gezinsmigratie), *Staatsblad* 2012, nr. 148, p. 8).

In this text, the government expresses a fear of a long chain of underprivileged migrants putting too much pressure on the Dutch welfare system, a fear which has already been present since the 1980s. By prolonging the period of dependent residence, the number of marriage migrants applying for social security should also diminish, as marriage obliges the sponsoring partner to take care of his or her spouse.

A new solution to limit marriage migration and promote integration/assimilation in Dutch society was also found in introducing a selection mechanism; since 2006 migrants from certain countries, including Morocco and Egypt, have to take a language and knowledge of society test before being granted permission to come to the Netherlands (Bonjour 2010: p. 306). Apart from stimulating early integration, this also works as a selection criterion, aimed at keeping immigrants with little interest in or motivation for integration out (Wilkinson, Goedvolk & Dieten 2008, p. 17). In practice, this means a selection on class and level of education. In 2011, the language level of this test was increased to A1 and now includes a reading test (Strik, De Hart & Nissen 2013, p. 15).

18 In 2012, this was around 1,400 euro per month before taxes.

Thus, compared to the discourse of the early 1980s, as described by De Hart (2003, p. 99-119) and Hooghiemstra (2003, p. 3-5, 11-19) the discourse on Moroccan marriage migration has shifted. The fear of Moroccan men in marriages of convenience overflowing the labour market has lost its prominent position, policy makers are now arguing from the perspective of integration and participation. It is the 'import bride' that is the main fear, an uneducated housewife from Morocco who is kept indoors by her husband, does not speak Dutch and cannot raise proper Dutch children, thus continuing a cycle of poverty, welfare dependence and gender inequality for generations. Language tests, income and age requirements should all work to prevent problematic, underprivileged migrants from coming to the Netherlands for their marriage.

These measures have had several effects on transnational marriages. First of all, it has become increasingly difficult to contract a transnational Dutch-Egyptian or Dutch-Moroccan marriage for those couples who aim to live in the Netherlands. The number of Dutch-Moroccan second generation migrants who marry a partner from Morocco has declined, especially after the introduction of the new, stricter, immigration policies in 2004 and the introduction of the language test in 2006. Whereas in 2000 52% of the second generation Moroccan men and 56% of Moroccan women marrying in the Netherlands had a so-called migration marriage with a partner from Morocco (Alders 2005, p. 47), in 2011 this went down to 8% for men and 11% for women. The number of marriages with native Dutch partners is more or less stable, around 11% for men and 6% for women. Most second generation migrants of Moroccan descent (around 75%) chose a marriage partner of Moroccan descent already living in the Netherlands. Interestingly, the number of migration marriages was still higher for Dutch-Moroccan women than for Dutch-Moroccan men, despite the income requirements.[19]

Second, strict migration rules might 'rush' transnational couples into marriage. Some couples who would have preferred to live together before marriage may choose to get married right away. Until 2004, there were stricter income requirements for couples living together than for married couples. Even when the income requirements were not a problem, some couples still thought getting married would help or even was necessary to get a residence permit for the foreign partner and got married even though they would have preferred to live together without being married (De Hart 2003: p. 163). Even couples who wanted to get married anyway, without living together, can choose to contract the marriage earlier than they would have done otherwise, because of the time-consuming procedure of getting permission for the foreign partner to live in the Netherlands. This issue will be discussed in more detail in chapter 4. Below, I will go further into the differences between the categories of 'mixed' and 'migration marriages' when discussing the element of distance.

19 *CBS statline*, accessed through www.cbs.nl in March 2013, percentages calculated by author.

2.4 Distance

2.4.1 Introduction: mixedness as the crossing of borders

When marrying transnationally, state and other boundaries are crossed, implying an element of distance. Distance can have practical dimensions, such as the physical distance to one's family and social network after migration. But distance also has a social and cultural element. The social, physical and cultural distances between the spouses are not equal in all situations, places and times. Some of the transnational marriages in this research, those between a native Dutch partner and a Moroccan or Egyptian partner are seen, by the spouses and by society, as being mixed; while marriages between Dutch-Moroccans and Moroccans are generally not seen as such. According to Waldis, all marriages contain aspects of sameness and difference, and it is only those differences that are marked as significant which make a marriage mixed (Waldis 2006, p. 3). The main marker of difference between the two categories of marriages in this research is ethnicity, which also includes elements of religion and culture. Mixed marriages between a native Dutch and a native Egyptian or Moroccan partner – the largest group in this research – mostly involve a crossing of particularly strong ethnic boundaries, in which images of Orientalism and Occidentalism polarise 'Western' and 'Islamic' societies and culture. As we will see in chapters 4 to 8, this polarisation plays an important role in how people experienced their mixed marriage, how they explained their divorce and their legal consciousness. In this paragraph, I will further introduce these two categories of mixed and migration marriages and the social images and discourses present in the three countries with regard to these marriages.

2.4.2 Mixed marriages

In the Netherlands, there is a strong othering of especially Muslim men as being dangerous. Already in the 1990s, Kamminga (1993) found that Dutch and foreign men and women in mixed marriages are ascribed different positions and motives in the Dutch media. Especially marriages of Dutch women and (foreign) Muslim men are seen as problematic. In these marriages representations of power relations between native and foreign and men and women collide (Kamminga 1993, p. 61). Hondius notes as well that fearful stories and negative representations in the Dutch media concern nearly exclusively Dutch women married to men from Muslim countries (Hondius 1999, p. 177).[20] Not surprisingly, many of the interviewed Dutch women reported that their friends and families were worried or disapproving of their choice of a Moroccan or Egyptian husband.[21]

20 Altena describes how already in the 19th and early 20th century marriages between Dutch men and native women in Dutch colonies were acceptable while such inter-ethnic marriages of Dutch women were out of the question, as they were supposed to marry within their own group (Altena 2008, p. 123).

21 I will return to the role of the social environment in chapter 8.

A notable example of the position of the Moroccan Dutch in this debate is the word *kutmarokkaan*, a strongly derogatory term, roughly meaning 'fucking Moroccan'. This term for Moroccan-Dutch juvenile delinquents, used by policymakers and politicians, to stress that they are not afraid to voice popular opinion, was used almost 200 times in Dutch newspapers in 2004-2005, in strong contrast with the 1980s, when printing such a term would have been unthinkable (Kuipers 2005, p. 197). Similarly, in December 2012, populist politician Geert Wilders and his PVV (Freedom Party) demanded an emergency debate in parliament about the 'Moroccans problem' after violence from a Dutch-Moroccan youth killed a linesman in a sports game. PVV-MPs, in typical new realist discourse, demanded from the Minister of Justice in a letter on Moroccan youth delinquency and violence: 'whether the Minister was afraid to name the Moroccans problem and, if not, why he did not do something about it?'[22]

In this context of fear of Muslim men, law and, more precisely, Islamic family law takes a special place. A negative discourse about Islamic family law is present, presenting it as dangerous for women and as the direct opposite of Dutch law, which liberates women. In this discourse, women from the Netherlands are warned about the dangers of marriages to Egyptian men, urging them to safeguard their legal rights as a precaution. On the website of the Dutch embassy in Egypt, for example, a detailed description of the documents needed to contract a marriage in Egypt and the procedures to obtain legalisation of these documents at the embassy is accompanied by warning statements on the possibilities for an Egyptian husband to stop 'his wife and children from leaving Egypt by issuing a travel ban', the lengthy and complicated child custody cases, especially for non-Muslim and non-Egyptian mothers, and the differences in divorce options between men and women in Egypt. Moreover, Dutch citizens marrying in Egypt are urged to get 'professional legal advice before getting married', and to use a translator during the ceremony.[23] Similar warnings can be found on websites and internet forums for Dutch and other European nationalities living in Egypt.

In Morocco and especially Egypt, on the other hand, there is an othering of European women, and to some extent also the Moroccan and Egyptian men married to them. Therrien (2012) has done research on mixed marriages in Morocco and describes how mixed marriages are often put in a negative light, as threatening social cohesion (Therrien 2012, p. 135). According to Behbehanian, from an Egyptian perspective, the gender inversions present in this situation are an important factor in making sexual relationships between Egyptian men and foreign women undesirable to the Egyptian state:

22 PVV-website http://www.pvv.nl/index.php/component/content/article/36-geert-wilders/6377-pvv-vragen-over-marokkanenprobleem-optreden-of-aftreden.html, accessed on the 7 February 2013.

23 Website Dutch embassy: http://egypt.nlembassy.org/Products_and_Services/Consular_services/Marriage/Getting_married_in_Egypt.html, accessed 22 November 2011).

> These men not only come to represent sexual promiscuity to the state, but they also serve as bearers of a range of social ills perceived to be infiltrating the nation as a result of the tourism industry, including dishonesty, theft, drug use, imitations of 'Western' behavior and general moral decay. (Behbehanian 2000)

For Moroccan and Egyptian men living in Morocco or Egypt, a European wife is not always the obvious choice for a marriage partner. This might very well be an important reason for Moroccan or Egyptian men to marry their foreign spouse informally or secretly, without the presence or knowledge of their families. In Egypt informal *'urfi* marriages between Egyptians are often used in secret relationships, for example when parents do not agree or in case of a second marriage (Abaza 2001). *'urfi* marriages will be further discussed in chapter 4.

2.4.3 Migration marriages

In so-called migration marriages the children of the labour migrants who moved to the Netherlands from Morocco in the 1960s and 1970s chose spouses from Morocco. Though the partners have been raised in different countries, these marriages are not generally considered to be ethnically mixed. In the Netherlands, these marriages are often condemned as being a hindrance for integration and leading to an endless chain of new migrants. As migration marriages sometimes are arranged by the parents, and sometimes include spouses who are also family members, they are suspect then as possibly being forced marriages. In the Dutch political discourse, this is an regularly returning issue when discussing transnational marriages, framed as something young migrant women need to be protected against (Bonjour & De Hart 2013: p. 64-66). In 2009, for example, the Dutch city of Rotterdam started a campaign to raise awareness and prevent girls and young women from being married off against their will during the summer holiday visit to the native country of their parents.[24] To help prevent involuntary abandonment in the country of origin and forced marriages, civil registry policies were also adapted to prevent fathers from deregistering their wives or children without their consent while remaining resident in the Netherlands themselves.[25]

A relatively new Dutch discourse with regard to migration marriages is the issue of 'marital imprisonment, concerning women who fail to get the cooperation of their husband in acquiring a foreign or religious divorce after their Dutch marriage or informal marriage has ended.[26] The issue was put on the Dutch political agenda after a very active and successful lobby by Dutch NGO *Femmes for Freedom*, founded by Dutch-Pakistani Shirin Musa, who won a Dutch civil law court case against her former husband, forcing him to cooperate in performing *talaq* and thus ending their

24 They could sign a statement that they did not want to get married and that the school should inform the police if she would not return after the summer holidays, *NRC Handelsblad*, 20 May 2009.

25 *Eindrapportage Verkennersgroep: Versterking aanpak huwelijksdwang en achterlating and reaction Ministry of Justice* (25 May 2013). Downloaded from rijksoverheid.nl, 9 July 2013.

26 For a legal discussion of this issue see: Rutten 2008.

religious and social marriage.[27] In Dutch policy frames marital imprisonment has been connected to forced marriages, involuntary abandonment in the country of origin and even female genital mutilation.[28]

The strong crossing of boundaries and othering experienced by some mixed couples was far less an issue in migration marriages in this research. Many partners in migration marriages marry spouses that feel 'close', from the family or the village, from the same religious background or other communities or regional identities they belong to in Morocco. This real or imagined closeness and their identity as Muslims may make Dutch-Moroccans less susceptible for the strong negative discourses on Islamic family law present in the Netherlands.[29] As one Dutch-Moroccan representative of a migrant welfare organisation said: 'Girls who have been born here [in the Netherlands] come into contact with two governments. We are married under two laws. In case of divorce, we therefore also need to arrange it under two laws' (Board member of Stichting Vrouw en Welzijn, 2 July 2009). She presented this statement as a simple fact, positioning the two legal systems at the same level, without the othering present in many stories about mixed marriages. My own position as a researcher may also have influenced these differences in representations. I will further discuss these below.

2.5 The context of the research: Self-positioning of the researcher

My personal position in this research has gradually shifted over time. When I started this research project, in 2008, I was 24 years old and had only just graduated. In many of the interviews with organisations I did at the start of my research I was taken for a student, a role which fits rather well with doing ethnographic research, as it invited people to explain everything they do to someone who still needs to learn and understand.

When doing most of the fieldwork with divorced spouses, in 2009-2011, I was either pregnant or just had a baby. This prompted many of the mothers (and to a lesser extent also fathers) I interviewed during this period to share stories about their children and to give all sorts of advice on child care. I occasionally brought my baby daughter (and on one occasion even my mother) along to interviews in Morocco and Egypt. To some extent this turned my formal interviews into social visits, helping to create rapport. However, it may also have influenced the stories interviewees told about their divorce. For example, several interviewees located the start of the break-

27 For more information see femmes for freedom website, www.femmesforfreedom.com and an interview with Shirin Musa in *NCR Handelsblad*, 'Wat God verbond, kan de rechter scheiden. Moslima dwong haar man tot islamitische echtscheiding via "gewoon" kort geding', 6 March 2011. Interestingly, Shirin Musa also accuses her former husband of being a permitboy", being in the marriage only for his right of residence in the Netherlands.

28 *Kamerstukken* 2012-2013, 32 840, nr. 8 (amendment Arib-Hilkens).

29 However, it must be noted that the Moroccan spouses from migration marriages are overrepresented in the research group, so my information on Dutch-Moroccan perspectives is limited to a few cases.

down of their marriage in the years their children were babies, which could possibly be related to the sharing of baby stories earlier in the interview.

As a white, native Dutch woman, many Dutch female interviewees easily told me the popular negative stories and experiences about Moroccan or Egyptian men; while on a few occasions Moroccan or Egyptian interviewees – male or female – referred to some of the accompanying negative stories about Dutch or European women. Similar to what Betty de Hart described in her study on mixed marriages in the Netherlands (de Hart 2003: p. 50-51), it was often asked if, or even (incorrectly) assumed, that I was in a mixed marriage myself, an assumption that might have been strengthened by having a brown-eyed baby with an Arabic-sounding name along. On a more theoretical level, being a new mother myself sharply redefined some of my ideas and understandings on gender in the family, questioning concepts of motherhood and fatherhood, which also informed some of my research questions.

As an employee of a Dutch faculty of law, although being an anthropologist and not a lawyer, people might have had certain hopes for (legal) help in their divorce cases which played a role in participating in the research. In a few cases these hopes were expressed explicitly by the interviewees themselves. In most of these cases I have emphasised that I am not qualified to provide legal aid, cannot personally help them in their cases, and referred them to relevant NGOs or lawyers, particularly the SSR in Berkane, NL Services in Tetouan and specialised Dutch lawyers Samira Bouddount and Ellie van den Brom. Occasionally, I gave some information about Egyptian or Moroccan law by email or phone to people who were not involved in the research, but I have been careful not to be used as a legal expert in court cases against a former spouse. This would imply side-taking, which does not fit well with my position as a researcher.

Interviewees regularly told very painful and negative stories about their former spouse, sometimes extending those to the ethnic group of their spouse or mixed marriages in general. In the interviews, I have always encouraged people to tell their own story, and tried to handle and analyse those stories with respect, regardless of my own opinion or perspective. However, some stories were easier to empathise with than others. This is also related to my own experiences and opinions. Many interviewees have made decisions and choices which are very different from those I have made or would make myself, and some voiced opinions that conflicted with values that are very fundamental for me personally. As a white, young, woman who has spent significant amounts of time in the Middle East, it was often easy for me to connect to the Dutch women living in these countries, sharing, for example, the experiences of harassment in Cairo's streets. On the other hand, having studied at the Dutch institute in Cairo, I had already been exposed to the negative discourse on *'urfi* marriages present in the Dutch community in Egypt. Handling the stories of '*Bezness* victims', Dutch women who reframed the story of their entire marriage in the frame of false love was especially difficult for me. Although I sympathised with feelings of betrayal and the sometimes horrible stories of violence, I remain critical of the frame that explains their husband's behaviour solely by most Egyptian men being in mixed

marriages only for the money or residence permit, and that European women are victims needing protection, while leaving out women's agency and responsibility.

The topic of family law and divorce is a very sensitive and topical one, and especially mixed marriages are prone to negative discourses and false oppositions. During the research project, my own opinions and feelings on issues of gender and the family were constantly challenged and redefined. In the Netherlands, ongoing debates and the tensions surrounding Islam and Islamic law meant that I was regularly asked to position myself and my research in these debates. I had to learn, and am still learning, not to fall for false oppositions of Islam and the west, and to steer clear of being put in a position of defending one or the other. A question Razack asked in her provocative article on the Ontario Sharia law debate is: 'how might feminists have avoided being drawn into the framework of superior, secular women saving their less enlightened and more imperiled sisters from religion and community and still responded to the dangers at hand' (Razack 2007, p. 16). In this research I have tried to avoid these pitfalls by collecting stories and experiences of a wide range of people from different contexts and backgrounds and presenting them together, on an equal level. I analyse their stories as stories, narratives that have often been told before to family or friends, not as facts.

2.6 Conclusion

The three dimensions of context: time, place and distance I have introduced in this chapter have shaped the experiences of spouses in a transnational divorce in multiple ways and on multiple moments. They are important both because of practical dimensions, such as the availability of a transnational network of organisations providing legal aid between the Netherlands and Morocco (see chapter 8) and the change of migration law over time which restricts the possibilities for transnational couples to live in the Netherlands (see chapter 4). On the level of discourse, the frames available on mixed and transnational marriages inform how spouses speak about the end of their marriage, as well as some of the legal actions they took. Lastly, these dimensions have also partly shaped this research project and my position as a researcher. In the following chapters I will analyse the experiences of spouses and how their stories refer to and can be placed within these contexts.

Chapter 3. The legal context of divorce

3.1 Introduction – definitions of law

Although formal, state-enforced law is certainly not the only source of organised social order (Moore 2005), in this study I have chosen to use this quite narrow, official concept of the law. This way, it is possible to look at other social norms and fields separately. Moreover, transnational couples have connections with more than one legal system, creating a complicated legal pluralism. I make a distinction between Moroccan, Egyptian and Dutch law, as formal, state-enforced law and sometimes also refer to the broader notion of Islamic family law as a complex whole of – historical and contemporary – texts and traditions of interpretation and implementation divided in different schools of law. Although Moroccan and Egyptian family law are in some aspects based on or connected to Islamic family law, there are important differences.

Spouses in transnational marriages have connections to two family law systems, which can interact. The interactions of family law are regulated by private international law (PIL). Each country has its own private international law. The Moroccan and Egyptian family codes have similar and quite uniform international private law systems, which are both closely connected to nationality. In both countries, family law applies to all cases in which one of the parties is of the nationality of that country or Muslim (see for a more elaborate discussion: Kulk 2013). This means that, in transnational marriages, Moroccan or Egyptian law is always applicable, even when the couple has been living abroad. Dutch private international law is more complicated and connected to all kinds of international treaties. Sometimes nationality is the main factor, but the applicable law can also be determined by the country of residence, depending on the legal issues at stake.

In this chapter, I will discuss marriage and divorce regulations and private international law of Egypt, Morocco, and the Netherlands, with special attention for the position of transnational families. The main question will be, how is divorce regulated in Egyptian, Moroccan, and Dutch family law and private international law, and how are these regulations implemented in practice, and, secondly, what are the consequences of these regulations and their implementations for transnational couples? In the analysis of these consequences I will pay special attention to aspects of gender, ethnicity and social class.

I will focus on three topics. First of all I will describe recent developments in Egyptian, Moroccan and Dutch family law. In the last decade, family law in all three countries has been reformed. I will describe these reforms and developments that influenced the present family law. Secondly, I will discuss marriage and divorce regulations in Egypt, Morocco and the Netherlands. As the transnational marriages and divorces in this research have taken place in different times, I will pay attention to old as well as current family laws. The legal regulation of divorce-related issues such as child custody and financial matters will be discussed in chapters 6 and 7. Lastly, I will

briefly pay attention to nationality and residence, which are highly relevant in transnational divorce cases, especially in the Netherlands.

3.2 Developments in Egyptian, Moroccan and Dutch family law

In the last decades, all three countries have reformed their family law systems, and in all countries this was both the result and cause of heated public debates on gender and the family. In Morocco, the *Moudawana* was reformed in 1993 and, more radically, in 2004, when a new family code was introduced. In Egypt, reforms have mostly been of a procedural nature. In 2000, a new law was introduced, often called the *khul'*-law, because of the controversial new article giving women the right to divorce unilaterally by *khul'*.[1] Furthermore, new family courts were introduced in 2004, and in 2005 the age limit for *hadana*, child custody or daily care, was raised. In the Netherlands, reforms mostly concern the rights of parents and children after divorce. Since 1998, parents automatically share custody of their children after divorce and in March 2009 a new law was introduced stressing the importance of contact between both parents and their children after divorce, obliging parents to make a so-called 'parenting plan' at the moment of divorce. In 2012, a long-debated new law on marital property came into effect, which included some changes but maintained the general principle of communal property. Most recently, spousal maintenance has become the subject of similar gender-equality-based debates, and at the moment of writing (June 2013) new proposals for limiting the duration and rights to spousal maintenance were being discussed in parliament.

These reforms were surrounded by social debates, reflecting views in society about the family. Apart from influencing legal reform, these local debates on gender, family, and family law may very well have influenced the legal consciousness of spouses in transnational families. In all three countries references have been made to similar open concepts like international human rights, equality, and the best interests of the child, but in different ways and with different results. Aspects of cultural authenticity and Islam are specific for the Moroccan and Egyptian contexts.

3.2.1 Egypt

In Egypt, Personal Status Law has been partly codified by Laws No. 25 of 1920 and No. 25 of 1929, during the rise of Egyptian nationalism and the struggle for independence from Great-Britain (Berger 2005: p. 60; Berger and Sonneveld 2006: p. 21-22). All non-codified issues are regulated by referring to Hanafi *fiqh* (Kulk 2013). Since the 1970s there has been much pressure, both nationally and internationally, to

1 This law is officially called law no. 1 of 2000 or *The law on Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters*. Besides the famous article on *khul'* (20), it contained other controversial clauses, such as the recognition of informal (*'urfi*) and the later-removed article which would allow women to travel without the consent of their husband (Sonneveld 2009, p. 1).

reform the Personal Status Law. Major reforms were made by Sadat in 1979, containing many provisions meant to improve the status of women, such as expanding the grounds for divorce to include polygamy as being injurious to women and giving women the right to work outside of the home.[2] Similar to the 1958 and 1993 family laws in Morocco, this reformed law was implemented during a period of recess of the parliament. However, judges refused to apply the reformed family law because they considered it a violation of *shari'a*, and it was declared unconstitutional in 1985.[3] Later that year, a modified, watered-down version was accepted, shortly before The UN Forum on Women in Nairobi took place, to keep Egyptian women's organisations from voicing their complaints at this international meeting. Women now needed to prove that their husbands' polygamy caused them material harm; polygamy was in itself not enough to apply to the divorce ground of *darar* (harm), just like in the old law of 1929 (Sonneveld 2009: p. 32-34; Singerman 2005).

In the 1990s, women's rights organisations tried, together with the Ministry of Justice, to reform the marriage contract to include stipulations that would strengthen the position of the wife in the marriage (Singerman 2005; Shaham 1999). Again, this was done in the context of several national and international conferences taking place; the Egyptian government was trying to improve its image in the international context. However, when the Sheikh al-Azhar opposed the new marriage contract, the government did not want to lose its Islamic legitimacy domestically and stopped the reform (Sonneveld 2009, p. 36).[4] It took until 2000 before the proposed reform of the marriage contract was actually implemented.

In 2000 a new procedural law was implemented, law No. 1 of 2000. It was meant to facilitate litigation in personal status cases, such as divorce, by rearranging over 600 articles into only 79 new clauses (Sonneveld 2009, p. 1). Although it was framed as a procedural law, it contained more than just procedural aspects (Singerman 2005, p. 175). In Article 20, women were given the right to *khul'*, unilateral divorce on the condition that they renounce their financial rights and pay back the dower (Sonneveld 2009, p. 2). This so-called *khul'*-law, was widely debated among different groups in Egyptian society. This debate was mostly dominated by religious discourse. Because the old personal status law had an overtly religious basis, reforms needed to be formulated on religious grounds as well (Singerman 2005, p. 166-167). Claims of cultural authenticity were important in the debate. In the newspapers, women's groups and the government were often accused of westernisation, and of wanting to destroy the Muslim family. They countered this by using the language of Islam. According to Sonneveld, a kind of 'Muslim public sphere' was created, in which 'norms and values are legitimized only when expressed in the language of Islam' (Sonneveld 2009, p. 64-65). According to Singerman, the coalition who defended the reforms 'continued to promote a 'rights discourse' but veered away from the liberal, individualistic, secular

2 This reformed law is often called Jihan's law, after Jihan Sadat, the wife of the president.
3 Although not for this reason but because of procedural aspects (Sonneveld 2009, p. 1).
4 Sheikh al-Azhar is the head of the al-Azhar university, and considered to be one of the leading voices in Sunni Islam.

framework of feminism associated with the West and women's 'liberation" (Singerman 2005, p. 167).

Although the debate was dominated by the discourse of Islam, the issues at stake were not necessarily religious, being, for example, related to the upcoming elections (Sonneveld 2009, p. 54-56, p. 64-65). According to Singerman, the 'liberal' Islam promoted by the proponents of personal status law reform, strengthened the centrist position of the government and its role vis-à-vis civil society (Singerman 2005, p. 175). Moreover, there were many critics, including women's activists, who claimed the law was only for elite women, who could pay to leave their husbands, for frivolous reasons, and marry a richer or more handsome man. According to Sonneveld 'it cannot be denied that deeply ingrained beliefs about the perceived irrationality of women and men's divinely ordained superiority were also greatly emphasized' (Sonneveld 2009, p. 75). Singerman also notes the relation between an image of women as fickle, emotional betrayers, who cannot take such an important decision as divorce, and the fear many Egyptian men associate with women's rights (Singerman 2005, p. 177). Some members of parliaments, for example, argued for a mediation period of 90 days instead of 60, in order to give women a further opportunity not to rethink their decision on *khul'*, and not to regret it later (Sonneveld 2009, p. 75).

According to Sonneveld, '[...] it would be too simple to treat the debate which surrounded the introduction of the *khul'* law as one between opponents, that is the religious establishment and the Islamists, and proponents, that is women's organizations, religious modernists and state officials' (Sonneveld 2009, p. 47). Complex alliances were made during the debate. In the end, these alliances led to the acceptance of the new *khul'*-law in Parliament. Although many MPs were against the law, they were severely pressured by the ruling National Democratic Party to vote in favour. Nevertheless, during the discussion in parliament, a number of the clauses had to be taken out, such as the clause to permit women to travel without the consent of their husbands and the imprisonment of men who refused to provide for their families. Nevertheless, these clauses were reintroduced later that year, after the political circumstances had changed. Furthermore, between 2000 and 2004 new family courts were introduced. Egyptian mothers were enabled to pass their nationality to their children and the first female judges were installed (Sonneveld 2009, p. 52-56).

In 2005, the age limit of *hadana*, child custody, was raised to 15 for both boys and girls, strengthening the position of mothers after divorce. Since the 2011 revolution this and other family law reforms made under former president Mubarak are being reframed as part of the old regime, 'Suzanne's [the wife of the former president, Mubarak] laws'. A new father's rights movement has actively been campaigning for more visitation rights, using similar arguments and methods as father's rights movements in the Netherlands have successfully been using (Lindbekk & Sonneveld forthcoming). This will be further discussed in chapter six on child care after divorce.

3.2.2 Morocco

In Morocco, the first family code, or *Moudawana*,[5] was introduced shortly after independence in 1956. After this codification, several attempts have been made to reform the law (for example in 1961, 1965, 1979 and 1981), but none of these ever made it to discussion in parliament. According to Jordens-Cotran, conservative parts of the Moroccan population have stopped these attempts to reform the family law by referring to its sacred status (Jordens-Cotran 2007, p. 28). In 1992, King Hassan II decided to reform the family law, as part of a highly controlled political reform and democratisation project. The king declared that he did not want a political struggle over Islamic family law, and he used his role as *amir al-mu'minin* (commander of the faithful) to claim the authority to decide on the issue of family law by way of *ijtihad* (Islamic reasoning). A commission was formed which, together with women's rights organisations, came to a reformed family law. The law was promulgated by the king on the 10th of September 1993, without ever having been discussed by parliament, which was dissolved at that time due to upcoming elections (Buskens 2003, p. 78-80; Salime 2009).

However, the reforms in 1993 were rather limited and mostly a symbolic gesture. According to Buskens, these reforms reflected the earlier reformist tendencies of the *Moudawana* of 1958; 'Most male prerogatives were preserved, out of respect for the venerable Maliki tradition and for traditional values and customs, in order to avoid social upheaval. Instead the government tried to protect weaker parties, women and children, against abuses of these privileges by men.' (Buskens 2003, p. 81). Reformists in Moroccan society were not satisfied with these reforms. Higher expenses for *talaq* divorces also led to unwanted consequences. Poorer parts of the population found the new procedures for *talaq* to be too expensive and sought other options, for example by husbands leaving their wives without actually divorcing them (Buskens 2003, p. 82). In 1998 a new government took office, in which socialist and centre-right parties came to power after years of opposition. In March 1999 the new government presented a plan to improve the position of women in Moroccan society and integrate them more fully into society and development. The project was explicitly connected to UN declarations and included provisions on issues such as education, reproductive health, economic development and, finally, family law reform (Buskens 2003, p. 85).

After the death of Hassan II in 1999, and the succession of Mohammed VI, a known supporter of women's rights, the debate on family law reform increased in intensity and gained a new momentum (Buskens 2003, p. 94; Zoglin 2009; Sadiqi & Ennaji 2006, p. 105). Similar to the Egyptian case, claims of cultural authenticity and true Islam were important in this debate, leading to a situation in which traditionalist Islamic legal scholars and Islamists accused the reformists of western influences, while the latter accused the Islamists of being financed by Saudi 'petro-dollars'. Both parties claimed the right to *ijtihad*, or Islamic reasoning, in attaining legal reform

5 Also spelled *Mudawannah*.

(Buskens 2003, p. 102-103, p. 120). This debate spread to Moroccan communities abroad, including the Netherlands. In Moroccan mosques in the Netherlands, protest petitions against the reforms were circulated while Dutch organisations, such as the 'Association of Moroccan Women in the Netherlands' (MVVN) and left-wing parties in parliament, supported the reform plan and tried to mobilise support from the Dutch government (Buskens 2003, p. 105).

After several appeals for his support, King Mohammed VI intervened in March 2001 by receiving representatives of Moroccan women's rights organisations at the palace. Afterwards, he appointed a commission to draft a new family code, in which both men and women from various disciplines were represented. This reform was framed as being in line with human rights and with religion, by using the term *shari`a,* referring to his position as *amir al-mu'minin* (commander of the faithful) and by entrusting the commission with the task of *ijtihad* (Buskens 2003, p. 113).

Eventually, the new *Moudawana* was accepted unanimously by all parties – albeit under pressure from the King – and took effect in February 2004 (Jordens-Cotran 2007, p. 42-44). The law was published with a preamble. In this preamble, the new family code is presented as a part of the democratisation and modernisation process of Morocco, '[...] making the Moroccan family – based upon shared responsibility, affection, equality, equity, amicable social relations and proper upbringing of children – a substantial major component of the democratisation process, given that the family constitutes the essential nucleus of society' (preamble new *Moudawana*, translation: HREA 2004, p. 2). It seems to aim for an improvement in women's rights during marriage and after divorce, such as 'placing the family under joint responsibility of the spouses', the husband being the head of the family before, and removing 'degrading and debasing terms for women' from the text (preamble new Moudawana, translation: HREA 2004, p. 3). This is in line with the attention paid to women's rights during the campaign for reform. However, the King warns that the new law should not be considered 'as a law for the woman only, but a *Moudawana* for the entire family – father, mother and children – and further ensure that this *Moudawana* eliminates discrimination against women, protects the rights of children and preserves men's dignity' (preamble new *Moudawana*, translation: HREA 2004, p. 6). The text seemingly anticipated criticism from both women's rights groups and their opponents.

In the text of the preamble, frequent references are made to human rights, international conventions and the equality of men and women. Many more controversial reforms are justified by referring to the words of Qur'an or the Prophet Mohamed (*hadith*), for example, when abolishing the obligation of a male marriage guardian for women who want to marry:

> Two: Entitle the woman who has come of age to tutelage as a right, and she may exercise it according to her choice and interests, on the basis of an interpretation of a holy verse stipulating that a woman cannot be compelled to marry against her will: '...place not difficulties in the way of their marrying their husbands, if it is agreed between them in kindness.' A woman may of her own free will delegate tutelage to her father or a male relative. (Preamble new Moudawana. Translation: HREA 2004, p. 3-4)

The new law contained many reforms that improved the legal position of women both during marriage and after divorce. The most important reforms with regard to divorce were the introduction of two new divorce forms: *chiqaq*, or no-fault divorce, and divorce by mutual consent. However, the old divorce forms *talaq*, unilateral divorce by the husband, *khul*, unilateral divorce in exchange for compensation from the wife and *tatliq*, fault-based divorce on specific grounds such as harm, non-maintenance or absence of the husband were not abandoned but only procedurally restricted.[6] Men can, for example, still use the old divorce form of *talaq*, but the procedure became much more complicated, including requiring judicial permission and a need to prove that all financial obligations to the wife had been met (Jordens-Cotran 2007: p. 335, 360).

As has been said before, human rights have played an important role in the debates regarding Moroccan family law reform. Contrary to most other Muslim-majority countries like Egypt, Morocco's reservations on CEDAW were lifted in December 2008 by King Mohammed VI, who stated: 'Our country has become an international actor of which the progress and daring initiatives in this matter are readily recognized.'[7] As can be seen from this statement by the King, human rights – in this context meaning women's rights – are framed as being a sign of modernism and progress. Family law is often discussed in this discourse on human rights. In the preamble to the new *Moudawana*, including the King's speech to parliament in October 2003, the law was presented as a modernist, human rights-based project. The first sentences stated that:

> Since acceding to the throne of his noble ancestors, His Majesty King Mohamed VI, our Chief Commander of the Faithful, may God protect him, has made the promotion of human rights a priority which lies at the very heart of the modernist democratic social project of which His Majesty is a leader. Doing justice to women, protecting children's rights and preserving men's dignity are a fundamental part of this project, which adheres to Islam's tolerant ends and objectives, notably justice, equality, solidarity, ijtihad (juridical reasoning) and receptiveness to the spirit of our modern era and the requirements of progress and development. (translation: HREA 2004: p. 2).

This connection between family law and women's rights issues is also reflected in the fact that the anniversary of the introduction of the new *Moudawana*, the Moroccan family law code, was proclaimed a national day of the Moroccan woman by the Moroccan King, celebrated on the 10th of October 2009 with a large conference organised by the Ministry of the Family, Social Development and Solidarity.

6 *Talaq* is often translated as repudiation.

7 CEDAW website: http://www.cedaw2010.org/index.php/cedaw-works/ratification-in-action/morocco, accessed on 17 May 2011.

3.2.3 The Netherlands

Similar to Morocco and Egypt, reforms in Dutch family law reflect changes in Dutch society since the 1960s. The current Dutch divorce laws originate from 1971, when fault-based grounds for divorce were replaced by a single, no-fault, ground.[8] Together with the introduction of the *Algemene Bijstandswet* (General Social Security Act), which gave women without paid employment the financial possibility to leave their husbands, these reforms caused a huge increase in the number of divorce cases (Wegelin 1990, p. 1). Other reforms include the equal treatment of children born inside and outside of marriage, the regulation of non-marital forms of co-habitation, and legal arrangements for the care and visitation of children after divorce (Vlaardingerbroek et al. 2011, p. 2-4). Dutch family law has been influenced by the European Convention on Human Rights (ECHR) and especially Article 8 of this convention, the right to respect for family and private life.[9] Sometimes, for example with regard to the relationship of (same-sex) partners of biological parents and their children, the Netherlands has reformed family law beyond the minimum standards set by the European court. Other reforms, especially with regard to the rights of children born outside of marriage and not acknowledged by their fathers, have only been implemented reluctantly after cases brought before the European Court of Human Rights have found these laws to be discriminatory or to infringe on the right to family life (Forder 2003: p. 35).[10] Recently, in Dutch politics, international human rights treaties have been regularly framed as a formal, slightly negative outside limitation on the possibilities of the Dutch legislator. On the other hand, the Netherlands actively supports human rights in other – mostly developing – countries, including Morocco, for example by financing a project to stimulate Moroccan legal reform on violence against women in cooperation with the NGO Global Rights.[11] Thus, in the Netherlands human rights treaties are framed more as an outside obligation which needs to be met and something to be supported abroad, not at home (Oomen 2011, p. 8).

Although there have been some reforms with regard to marital property, maintenance rights and the division of pension benefits after divorce, most of the reforms since the 1970s were connected to the issue of equal treatment of fathers and mothers with regard to their children. Since the 1970s, pressure groups of divorced fathers have been pushing for more rights to visitation after divorce. Throughout the 1980s this was a highly controversial subject, leading to the introduction and subsequent withdrawal of a law giving non-custodial parents visitation rights (Wegelin 1990). In 1998, the concept of custody of one parent after divorce was abolished and replaced by a construction where parental authority of both parents continued after divorce. In March 2009, a new law came into effect, called '*Wet bevordering voortgezet ouderschap en*

8 This ground is *duurzame ontwrichting* or permanent breakdown of a marriage.

9 Officially called Convention for the Protection of Human Rights and Fundamental Freedoms.

10 Further examples can be found in the work of Forder (Forder 2003, 2002) and Vlaardingenbroek at al. 2008.

11 *Kamerstukken II* 2010/11, 32500-V, nr. 8, p. 92 (parliamentary documents on the Budget of the Ministry of Foreign Affairs).

zorgvuldige scheiding' (law [for the] promotion of continued parenthood and careful divorce). According to the preamble, the law is meant to reduce contact problems after divorce and to promote a sense of shared responsibility for raising the children. In order to achieve these goals, parents are required to agree on how they will deal with their children, in a so-called parenting plan, which needs to be presented to the judge before a divorce request is processed. Furthermore, parents are obliged to promote the contact of their child with the other parent, and parents are obliged to have contact with their children unless there are strong indications that this would be harmful for the child.

According to the preamble, several organisations were consulted about the draft law. In addition to organisations of lawyers and other legal practitioners, such as the Dutch Bar Association and the *Raad voor de rechtspraak* (Judiciary Counsel), the *Stichting Samenwerkingsverband Familierecht* or foundation [for] collaboration [on] family law were mentioned as having advised the Ministry of Justice on the new law. This latter organisation, in fact, is a fathers' rights NGO which aims to end contact frustrations and to lobby for the reform of Dutch family law, the judiciary and child services in order to represent the interests of children better. No other NGOs were consulted. Mothers' rights initiatives, such as the *bezorgde moeders* (concerned mothers), focusing on the problems of contact arrangements after domestic violence, tried to have their case heard through lobbying, but they had only limited success and were not included in the law-making process.[12]

The introduction of the law more or less coincided with the criminal conviction in February 2009 of a mother who had refused to let her ex-husband see their child, which led to extensive publicity in the Dutch media.[13] Wegelin (1983; 1990) analysed newspaper articles on the issue of contact between divorced parents and children between 1979 and 1981 and found that the prevailing image was that of the vengeful mother who abused her power to withhold the children from their father because she was unable to cope with the divorce. The issue of equal treatment was equated with more rights to contact for fathers, while the issue of the division of daily care and responsibilities was left out of the picture (Wegelin 1983, p. 192-193; 1990). Although 30 years have passed since this research was undertaken, and there have been several changes in society and family law since, it seems that little has changed in the popular image. Judging from newspaper articles after the criminal conviction of the mother who refused to let her ex-husband see her child, Wegelin's conclusions still seem accurate. For example, the *Volkskrant*, a well-respected newspaper, published a full-page article entitled 'Revenge of the Mother',[14] while *NRC Handelsblad*, another quality newspaper, headlined: 'Hope for father without child; judicial support for parents who are not allowed to see their children'.[15] Similar conclusions have been drawn by

12 For an overview of lobby attempts and results see: http://www.bezorgdemoeders.nl/content/1/home.html, accessed 2 May 2012.

13 Rechtbank Leeuwarden, 5 February 2009, LJN: BH2027.

14 'Wraak van de moeder'. Jorien de Lege in: *de Volkskrant*, 14 February 2009.

15 'Hoop voor vader zonder kind. Juridische steun in de rug voor ouders die kinderen niet mogen zien'. Joke Mat in: *NRC Handelsblad*, 28 January 2009.

Smart (1991) about the situation in Canada, describing references to 'the fact that men are perfectly capable of 'caring for' as if this projected capacity should carry the same moral weight as the actual activity' (Smart 1991, p. 494). Below, I will compare these Dutch reforms with the Moroccan and Egyptian debates.

3.2.4 Similar Discussions, Different Outcomes

In all three countries, discourses of human rights were used in discussions surrounding family law reform. Egypt, Morocco and the Netherlands have signed international human rights treaties and conventions, such as CEDAW, which have influenced their respective family law systems. Both the Netherlands and Morocco refer to these in preambles to new family laws. The Netherlands makes quite specific references to certain conventions which need to be adhered to, whereas Morocco stresses the importance of human rights as a general principle, framed as a sign of progress and modernity, inspiring legal reform. Although similar references were made, they worked out differently in the three countries. Whereas the discourse of equal treatment of men and women in Morocco and Egypt lead to more rights for women and mothers, the same discourse was used in the Netherlands to create more rights for non-caring partners (generally fathers). Hence, a discourse used in earlier periods to promote equal opportunities for women was thus used in what Boyd, writing about Canada, has called 'a backlash against feminism' (Boyd 2004). Considering the recent growth of Egypt's fathers' rights movement, and the events concerning the departure of Mubarak in 2011, a similar backlash referring to gender equality might occur there (Lindbekk and Sonneveld forthcoming).

Both in Morocco and Egypt the debates were framed in the language of Islam but with different results. According to Sonneveld, a kind of 'Muslim public sphere' was created, in which 'norms and values are legitimized only when expressed in the language of Islam' (Sonneveld 2009, p. 64-65). This discourse is related to claims of cultural authenticity and accusations of foreign influence. Although the Moroccan debate was fierce, after the intervention of the king using his title as *amir al-mu`minin*, commander of the faithful, parliament voted unanimously in favour of the new law, including Islamist parties as de PJD. In Egypt, on the other hand, where equal pressure was put on MPs from the leading NDP, some reforms in of the so-called *khul`*-law were initially amended out, such as the right of women to travel without the permission of their husband, only to be reintroduced when the political circumstances changed.

Whereas the Netherlands and Egypt are moving towards a less fault-based divorce system, Morocco has made fault a more important factor, for example in determining the *mut'a* or compensation that needs to be paid by the husband to the wife after a *talaq* or *tatliq* divorce. According to Dewar, the shift from a fault to a no-fault system of divorce has in many countries been a real transformation, not only with regard to the grounds on which divorces where based, but also with regard to their consequences and the way the participants in the divorce were to be perceived. No-fault divorce detaches the consequences of divorce almost entirely from considera-

tions of responsibility for the breakdown of the marriage (Dewar 1998, p. 472-473; 2000, p. 60). This also means, as will become clear in chapter 5, that domestic violence or abuse no longer has a place in the Dutch divorce procedure. According to Dewar, the view on divorcing spouses shifted from 'moral agents deserving of blame or credit' to 'individuals in need of expert assistance' (Dewar 2000, p. 60). However, even though *khul'* in Egypt is legally a form of no-fault divorce, Sonneveld shows how judges used a loophole in the law to reintroduce elements of fault. They *do* treat women as 'moral agents deserving of blame' when they decide on the costs of the obligatory reconciliation process or whether women need to pay back just the dower, or also the *shabka* and *ayma* based on their personal perceptions of the motives for the divorce (Sonneveld 2009, p. 121-140). I will return to the issue of fault-based and no-fault divorce in chapters 4 and 7.

3.3 Legal aspects of divorce

Below I will go further into the legal aspects of divorce and private international law in Egypt, Morocco and the Netherlands. The legal aspects of child care after divorce and the financial aspects of divorce will be discussed in chapters 6 and 7.

3.3.1 Egypt

In Egypt, there are two main forms of divorce; formal, judicial ways to divorce using the court, and informal, out-of-court ways to divorce. These two forms are mostly divided by gender. Men can divorce their wives out of court by performing *talaq*, often translated as repudiation. This happens by pronouncing an oral formula, which needs to be registered afterwards. Since 2000, the legal effects of *talaq*, for example inheritance, take place only after registration of the *talaq* with the *ma'dhun*, or notary. The notary then has to inform the wife through a court usher (art. 5b).[16] Couples with a foreign spouse can only use the notary of the Ministry of Justice, in Cairo, for marriage and divorce (Kulk 2013: p. 32-33).[17] *Talaq* is revocable and can be revoked during the *'idda* or waiting period.[18] The consent of the wife is not necessary to revoke the divorce, just resuming spousal relations was considered enough. The husband does, however, need to inform his wife, since 2000, and cannot simply prove that he resumed the marital relation (Bernard-Maugiron & Dupret 2008, p. 60-62). The third *talaq* is final and irrevocable. When men divorce their wives they must pay the deferred dower to their wife, maintenance during the *`idda* and a *mut`a* or compensation, equal to two years of maintenance, depending on the wife's fault leading to the divorce (art. 18b). Although men are obliged to register *talaq* within 30 days, they

16 Law nr. 100 of 1985, amending law nr. 25 of 1929.

17 Often called the *Shahr Iqari*, or land registry, after its other function.

18 This period is 60 days for women who menstruate or 90 for those who count the *'idda* by month (Sonneveld 2009, p. 33). In pregnancy, this *'idda* lasts until the birth of the child.

do not always do so, leaving their wives in an insecure situation (Human Rights Watch 2004, p. 18). If a couple has put a stipulation in their marriage contract that the wife has a similar right to divorce (*isma*), women can follow the same procedure as men performing *talaq*. Generally spoken, this is a rare stipulation, but it is often promoted by foreign women living in Egypt as a precaution.[19]

Women who do not have this stipulation in their marriage contract can only obtain a divorce through the courts. Regarding judicial divorce, there are two options, fault-based divorce and no-fault divorce through *khul'*. Women can try to get a fault-based judicial divorce while keeping their financial rights on the grounds of injury or harm, non-payment of maintenance, certain physical or psychological conditions or the absence of the husband for more than a year. In practice, however, it appears to have been difficult for women to prove injury in general, and psychological injury in particular, as a basis for divorce, and such claims often led to very long court procedures, sometimes even as long as five to seven years. Fault-based divorce also contains class-based differences, because a women needs to prove that this situation is injurious for women like her, meaning women from a similar cultural and social background (Welchman 2004, p. 39-40).

The other option for judicial divorce is a divorce by *khul'*. This no-fault option was introduced in 2000 and entails the wife's renunciation of her financial rights after divorce and the return of the dower. No proof is needed, just the claim of the wife that she detests her life with her husband, and that she cannot continue her marital life for the fear that she will fail to abide by the limits of God. The judge must then appoint arbitrators to try to reconcile the spouses for a period of three months. Once issued, *khul'* is not open to appeal. Although *khul'* should provide women with an easier way of divorce, Sonneveld has found that husbands, as well as judges, may use procedural obstacles such as the obligatory mediation by arbitrators and the ambiguity about the exact amounts needed to be paid back by the wife to slow down the litigation process (Sonneveld 2009, p. 140). Other judges just issue the *khul'* judgement and refer the discussion on the dower to a civil court (Sonneveld 2009, p. 111; Al-Sharmani 2008, p. 8). According to al-Sharmani, all women in her research who filed for *khul'* also had grounds to file for a divorce based on harm (Al-Sharmani 2008, p. 8). According to Sonneveld (2009) around 50% of women-initiated divorces are by way of *khul'*, even in cases where women could apply for a divorce on the basis of harm, because it is a faster and easier way (Sonneveld 2009, p. 128-129).

A last option, far more common for upper-class women than court-based divorce through *khul'*, because of issues of loss of face, is to conduct an agreement between the husband and the wife to end the divorce by *talaq* with *ibra'*, meaning that the husband will exercise his right to *talaq* while the wife will waive any financial rights from her husband (Welchman 2004, p. 68-69). As the husband has the right to *talaq* anyway, this means that there is a very unequal power position for the wife in determining the conditions. Before the introduction of *khul'*, husbands often used

19 For a further discussion of stipulations in the marriage contract see: chapter 7 and Sportel, forthcoming.

this option to obtain a 'cheap' divorce, without paying the deferred dower. A man would pressure or mistreat his wife until she would ask for a divorce, in some cases even letting his wife pay amounts of money in order to 'buy her freedom'. Since the introduction of *khul'*, women have a cheaper way of obtaining a divorce through the court, and they no longer need to resort to paying their husbands huge sums in order to get a divorce. Moreover, women can now use *khul'* as a strategy, for example to get an *ibra'* divorce. Because it is embarrassing for men to be divorced by *khul'*, they will often comply. According to Sonneveld the majority of *khul'* cases are aborted after a while. In many of these aborted cases the court is effectively used as a strategy to obtain certain aims. On the other hand, the mediators in the new family courts also try to persuade spouses in *khul'* cases to settle the case and conduct an *ibra'* divorce. This way men do not have to bear the stigma, while women are also slightly better off financially (Sonneveld 2009, p. 175-180).

As far as I have been able to find, the recognition of a Dutch divorce is not possible in Egypt. Whereas Egyptian men or Dutch men (who have converted to Islam) married to an Egyptian wife can perform *talaq* at the Egyptian embassy in the Netherlands, Dutch or Egyptian women need to start a second divorce procedure at an Egyptian court, if their husband is unwilling to cooperate by performing *talaq*.[20] Some spouses from transnational marriages, especially women, have become stuck in an in-between situation, where they were divorced in the Netherlands but still married in Egypt.[21]

3.3.2 Morocco

In Morocco, new forms of divorce were introduced in 2004 while older forms are still present, meaning that there is a large and complicated array of options (Jordens-Cotran 2007, p. 294). Before 2004, the possibilities for divorce were more or less similar to Egypt consisting of *talaq*, *khul'* – which is an out-of-court procedure in Morocco – and *tatliq* or court-based divorce on the grounds of non-payment of maintenance, abstinence or abandonment, latent defect (certain physical or psychological conditions), absence from the conjugal home for more than one year or harm. As in Egypt, it is very difficult to prove harm, unless there is evidence of severe physical damage. Most women therefore filed for a divorce on multiple grounds and included maintenance claims in an early stage. However, in Mir-Hosseini's research (done in the 1980s), court-based divorce was an exception, most divorces occurred through *khul'* or *talaq*. Court cases can take years, and expensive specialist help in the form of lawyers is important in order to win a case; even poor people tended to invest in one. Moreover, the public discussion of a private conflict is in most cases a last resort. According to Mir-Hosseini, the lower classes are therefore overrepresented in the courts, where most of the cases are filed by women, because for them the financial

20 E-mail contact with the Egyptian Embassy in the Netherlands, July 2011.

21 Activist Shirin Musa from NGO *femmes for freedom* is campaigning for granting such 'imprisoned women' easy access to divorce.

interests at stake can be even more important than reputation (Mir-Hosseini 2000, p. 84-114).

Since the 1993 reforms, *talaq* has been restricted. Before the *talaq* could be effective, the husband needed permission from a judge. The judge would determine the amount of *mut'a*, or compensation, that needed to be paid by the husband. The amount was not only based on the financial capacity of the husband and the needs of the wife but also on the motive for the *talaq*. This meant that an extra fault factor was introduced. However, the actual amounts awarded by judges were rather low. This compensation needed to be deposited at the court or paid to the wife before the actual *talaq* could take place in front of two *'udul* (specialised notaries). However, an unsuspected effect of these measures to restrict *talaq* was the growth of the number of *khul`* cases. According to Jordens-Cotran, this could be explained by husbands mistreating their wives, pressuring them to sign a *khul'* divorce and giving up their financial rights (Jordens-Cotran 2007, p. 310-322).

Since 2004, the possibilities for *talaq* have been even further restricted. Men now only have 30 days to deposit all financial entitlements of their wife and children, or their request will be cancelled. Moreover, judges need to summon both spouses for a reconciliation attempt. If children are born from the marriage, two attempts must be made. If the husband is not present at this attempt, the procedure will be cancelled. However, this reconciliation attempt does not mean that the wife can stop the *talaq*. Also, even though husbands can still decide to take their wife back during the *'idda*, the wife no longer needs to submit to this. If she wants to stay divorced, she can easily start a *chiqaq* procedure (see below) (Jordens-Cotran 2007, p. 313, 333-334).

Apart from restricting *talaq*, two new forms of divorce have been introduced. The first is divorce by mutual consent. Article 114 reads:

> 'The spouses may mutually agree on the principle of ending their conjugal relationship with or without conditions, provided that the conditions do not contradict the provisions of this *Moudawana*, and do not harm the children's interests. When the spouses agree, one or both of them shall petition the court for divorce, accompanied by the authorization to validate it. The court shall attempt to reconcile the husband and wife. When this proves impossible, the court shall authorize the certification and validation of the divorce.' (translation: HREA 2004, p. 29)

However, it is possible to introduce conditions in the divorce contract for both spouses. If it is only the wife having to fulfil certain conditions, there is little difference between divorce by mutual consent and *khul'*.

The second new form of divorce is the *chiqaq* procedure, which can be started by the husband, the wife or both spouses together. In this procedure, the spouses in fact do not ask for divorce directly, but come to court to ask the judge to 'settle a dispute that risks to breakdown their marriage' (translation: HREA 2004, art 94). If the court does not succeed in reconciling the spouses, it will grant a divorce. Like in *talaq*, wives keep all their financial entitlements, and the *mut`a* is determined based on the fault each party has to the conflict. In theory, this could also mean that the wife pays *mut'a* to the husband. The judge cannot refuse the divorce (Jordens-Cotran 2007, p. 354-

355). According to Jordens-Cotran, the introduction of the *chiqaq* procedure means that women and men in Morocco now have equal access to divorce. Furthermore, the two new forms of divorce, divorce by mutual consent and *chiqaq* divorce, in theory make *khul'* or *tatliq* divorce redundant (Jordens-Cotran 2007, p. 335, 360).

This theory seems to be confirmed in practice. According to LDDF numbers for 2006, there have been 26,023 applications for judicial divorce, 20,223 by women and no less than 5,800 by men (Ligue Democratique des Droits des Femmes 2007, p. 3-4). One of the possible explanations for men using *chiqaq* procedures is that men did not need to deposit the financial entitlements of their wife and children at the court before the court would grant the divorce, unlike in case of *talaq*. Men could therefore use the *chiqaq* procedure as a 'cheap' way to divorce; they would get their divorce and then fail to pay. However, the Moroccan Ministry of Justice seems to have cut off this option by issuing a directive approving the Casablanca courts practice of insisting that husbands first deposit their wives' financial rights before granting both registration of *talaq* and judicial divorce.[22] Still, it could be plausible that *chiqaq* is becoming the 'standard' way to divorce for both men and women. Something similar has happened in Syria, where both men and women almost always divorce by way of *chiqaq*, even though other ways are possible (Carlisle 2007).

Before 2004, recognition of a foreign divorce was hardly possible in Morocco, except when Moroccan law had been applied by the foreign judge. Therefore, in the past, many transnational divorcees living in the Netherlands divorced twice, once in the Netherlands and once in Morocco (in the case of *tatliq*) or at the consulate (in the case of *talaq* or *khul'*). According to Jordens-Cotran, some women started procedures in the Netherlands to force their husbands to comply with a *talaq* or *khul'* procedure at the consulate. For Moroccan men, who can marry more than one wife, and who before 2003 had easy access to *talaq* in Morocco, this tended to be less of a problem. However, there have also been procedures initiated by Moroccan men who did not want to marry polygamously and who tried to force their wives to cooperate with a *khul'* divorce (Jordens-Cotran 2007: p. 437). Since 2004 it has become easier to get a foreign divorce recognised in Morocco, if certain conditions are met, such as an obligatory attempt to reconcile the couple (Jordens-Cotran 2007, p. 435).[23]

3.3.3 The Netherlands

Since 1971, no-fault divorce, on the ground of *duurzame ontwrichting* or the permanent breakdown of a marriage is the only way to divorce in the Netherlands. Spouses can petition the court for divorce individually or make a joint application. Generally, a marriage is *duurzaam ontwricht* if one of the partners claims it to be so. Resistance to the divorce is therefore hardly ever successful; although spouses do have the right to

22 Results from unpublished research project by Jessica Carlisle, 2007-2008.

23 For an example of such a reconciliation procedure taking place in the Netherlands see: Rb. Alkmaar, 15 November 2007, *LJN* BB9060.

appeal; it is, in practice, not possible to stop the divorce.[24] During the divorce process, the assistance of a lawyer is obligatory. At the moment of research there are several social services available to direct people to lawyers, and litigants with a low income could get government support for the costs of a lawyer.[25]

For transnational couples, a divorce can be a more complicated affair. When a transnational couple living in the Netherlands decides to divorce, the judge will first decide which law will be applicable to the divorce itself and to financial issues such as the division of property or child custody. In one and the same divorce, there can be differences between the law applicable to child custody, division of property, maintenance and the divorce itself. In general, Dutch family law will be applicable to the divorce itself.[26] Before 2012, there were two possible exceptions in which foreign family law can be applicable. First of all, in cases in which both partners have the same, foreign, nationality *and* if both parties explicitly choose so. Secondly, in cases in which both parties shared the same foreign nationality and did *not* choose for Dutch law. If the applicable law was disputed during the process, the judge decided based on the 'effective' (in case of dual nationality) or 'real' (in case of one nationality) nationality of the partners, looking for example at factors like the duration of residency, the command of the language, an application for Dutch citizenship or the wish to do so (Jordens-Cotran 2007, p. 409-415). Since January 2012, this has changed. Dutch law is now automatically applicable unless *both* spouses choose to apply foreign family law or if the other spouse does not object to the choice of law. In case of disagreement, foreign family law will be applied if one of the spouses chooses so *and* if *both* partners have a 'real social connection' to the country of their shared foreign nationality (art. 10: 56 BW). This procedure is mostly relevant for Dutch-Moroccan migration marriages, in which the couple generally shares Moroccan nationality, due to the fact that it his nearly impossible to lose Moroccan nationality. Due to the significant differences between Dutch and Moroccan family law with regard to spousal maintenance, strategic choices can be possible, which privilege one partner over the other. The applicable law can thus become part of the conflict during the divorce process.

The implications of this situation are gendered, especially before 2004 (see also: Van Den Eeckhout 2003). Because of public policy arguments, Dutch judges are generally reluctant to grant men the right to *talaq* in a Dutch court. Because this kind of divorce is only possible for men it is not considered to be in accordance with the principles of equal treatment of men and women.[27] However judges seem to have no problems with issuing a *tatliq* divorce, for example based on the non-payment of maintenance, also a highly gendered ground because only men need to pay maintenance (Jordens-Cotran 2007, p. 420-424). In practice, this meant that Moroccan

24 See for one very exceptional example in which the wife of a man with serious mental health problems successfully appealed the divorce; Hof Leeuwarden, 23 September 2008, *LJN* BF4943. For a similar case in which the appeal was unsuccessful see: HR 13 February 2009, *LJN* BG6720.

25 Since 2009, several budget cuts have limited the possibilities for government-sponsored legal aid.

26 I will return to the law applicable to the other aspects of divorce in the next chapters.

27 The form of the *talaq* (which takes place by the declaration of the husband, even if a judge is involved) is another, more formal, reason for its non-recognition.

women in the Netherlands had more options to divorce than Moroccan men. Under certain conditions they could choose between Moroccan and Dutch family law whereas according to Jordens-Cotran no Dutch judge has ever granted a Moroccan man a divorce based on Moroccan family law (Jordens-Cotran 2007, p. 428). In one case, the application for divorce by a Moroccan man was actually refused, because Moroccan law was applicable but the Dutch judge could not accept a *talaq*. A divorce by *talaq* in Morocco would also not be acknowledged, meaning that this man simply could not legally divorce in the Netherlands. Eventually the Supreme Court of the Netherlands decided that the Dutch judge should have applied Dutch law to the divorce if a divorce based on Moroccan law was not possible, instead of simply refusing the divorce (see also: Jordens-Cotran 2007, p. 428).[28] However, this has changed with the introduction of the *chiqaq*-divorce, which is roughly similar to the Dutch ground of *duurzame ontwrichting*, and therefore does not contradict Dutch public policy.[29] For Egyptian men in the Netherlands, similar problems can still occur, as in Egypt *talaq* is the only way men can divorce.

I argue that these gendered limitations to the application of Islamic family law in the Netherlands need to be seen in the light of the general discourse in the Netherlands that Islamic family law is bad for women and therefore incompatible with Dutch public policy, as has been described in chapter 2. This effort to 'protect' women from Islamic countries from gender inequality in Islamic family law actually produces gender inequality in another way, making it more difficult for men than for women to obtain a divorce in the Netherlands. Moreover, it is not always true that the application of foreign law based on Islamic law is disadvantageous for women. In many disputes on financial matters, for example, women ask for Moroccan family law to be applied because it brings them more financial rewards. This will be further discussed in chapter 7.

Another option for transnational couples is the recognition of foreign (Egyptian or Moroccan) divorces in the Netherlands. *Tatliq* divorces are generally accepted without any problems, but in case of out-of-court divorces such as *khul'* or *talaq* certain conditions have to be met.[30] Again, these have to do with issues of equal treatment of men and women. The most important condition is proof of the consent of the wife.[31] This can be proven either by the fact that the wife is the one to register the divorce or, if a man wants to register the divorce, by a declaration of approval by the wife or for example the fact that she has married again. Again, this means that it is far easier for Moroccan and Egyptian women than Moroccan and Egyptian men to have

28 HR 9 December 2001, *LJN* AD4011.

29 For an example in which the husband successfully applied for a divorce on the ground of *chiqaq*: Rb. Alkmaar, 26 January 2006, *LJN* AV0789.

30 BW10:57. Before 2012, this was arranged in article 3 Wet conflictenrecht inzake ontbinding huwelijk en scheiding van tafel en bed (3 WCE).

31 This was for example the case when the marriage of an Egyptian man, married to a Dutch woman, was annulled after ten years because the husband could not prove sufficiently that his ex-wife, whom he divorced in the late 1980s, had agreed or resigned to the divorce: HR 21 December 2007, *LJN* BB8076.

a foreign divorce recognised, whether it is through *tatliq*, *talaq* or *khul'*. In practice, this can be of great importance for Moroccan or Egyptian men who want to become Dutch by naturalisation, as their application will be rejected if they are 'polygamous' because the *talaq* of an earlier wife is not recognised (Jordens-Cotran 2007, p. 465-467; see also: Van Den Eeckhout 2003).[32] I will further discuss issues of nationality and residence in the next section of this chapter.

3.4 Nationality and residence

The nationality of a country does not only represent a certain bond with a country or its citizens, but also entails certain rights and obligations, such as the right to access and residence or to hold property and the obligation to do military service (De Hart 2012, p. 18-22). Nationality can be highly relevant in (transnational) divorce as an important factor in determining the applicable family law. The Netherlands, Egypt, and Morocco all have a nationality system based on *ius sanguinis*, meaning that nationality is passed on to children by their parents, even when they live abroad.[33]

Because of the aforementioned practical implications, it can be very useful for partners in a transnational marriage to acquire the nationality of the country they live in. In Morocco a Dutch woman married to a Moroccan man can easily acquire Moroccan nationality if she has lived for at least five (before 2007, two) years in Morocco, together with her husband. Dutch men married to Moroccan women cannot obtain Moroccan nationality through their marriage.[34] In the Netherlands, foreigners married to a Dutch national can acquire Dutch nationality after three years of marriage, but they will need to pass a citizenship test (see: Van Oers 2013). The foreign wife of an Egyptian national can request Egyptian nationality, but the marriage needs to last for another two years after the application, only after those two years Egyptian nationality will be granted. Foreign husbands of Egyptian wives cannot obtain Egyptian nationality through their marriage (Kulk 2013, p. 137-138).[35]

Acquiring new nationalities can also have consequences for the 'old' nationalities. In principle, Dutch nationals lose their nationality if they acquire another. Because of both the practical, emotional and even financial consequence of losing one's primary nationality, this could be an obstacle in acquiring a new one. Since 2003, people ac-

32 See for more information on recognition of Moroccan divorces in the Netherlands: Kruiniger 2008; Jordens-Cotran 2007; Rutten 1988.

33 This happens on the condition that there is a legal relationship between the parents and the child. If there is no marriage between the parents, a Moroccan or Egyptian father cannot pass on his nationality. A Dutch unmarried father needs to acknowledge his child, preferably before birth (see for an elaborate discussion: Kulk 2013).

34 They can, however, follow the 'normal' naturalisation procedure, not based on the marriage. Requirements include five years of residence, knowledge of Arabic and proof of being able to keep oneself (Kulk 2013, p. 140-141).

35 Requirements for normal naturalisation include ten years of continuous residence in Egypt, knowledge of Arabic and being able to keep oneself. See for a more detailed discussion of requirements (Kulk 2013, p. 138)

quiring the nationality of their (foreign) spouse are exempted from this rule. On the other hand, foreigners married to a Dutch national are exempted from the requirement to renounce their own nationality when acquiring Dutch nationality (De Hart 2012, p. 57).

Having the nationality of the country of residence automatically enables the foreign partner to remain there after divorce. However, if the foreign partner did not acquire the nationality, for whatever reason, residence can become an issue after divorce. For Moroccan and Egyptian spouses, Dutch residency can give access to a society with a higher level of prosperity and the social security provisions of a welfare state. On a more personal level, it can be difficult to leave a country where one has lived for a prolonged period of time and involuntary return migration can pose financial as well as social difficulties. The presence of children living with the ex-husband or wife can be another important reason for prolonged residence. In the Netherlands, until 2012 spouses in transnational marriages could obtain an independent residence permit after three years of marriage to a Dutch national.[36] Until that time the residence permit is dependent on the marriage, which means the foreign partner must leave the country in case of divorce. Exceptions can sometimes be made in case of special circumstances, such as domestic violence, or the care or contact with Dutch children from the marriage or of the foreign children with a Dutch parent. According to de Hart, this link between marriage or child contact and residence changes the Dutch partner into a kind of gatekeeper, a powerful but ambiguous position. This position can also have negative consequences, such as creating insecurity as to whether the former spouse will be able to stay in the Netherlands after divorce to take part in child care (De Hart 2002, p. 101-103). In Egypt, foreign divorcees of Egyptian men can also get temporary residence permits when children are under their custody.[37]

3.5 Conclusion

This chapter discussed the legal context in which transnational divorces take place. In all three countries, family law is and has been the subject of fierce social and political debate and conflict. As a result, family laws have changed over time, which means that the transnational couples in this research have divorced in different legal contexts.

Specific for transnational couples is the interaction of family law systems through private international law and the influence of nationality and migration law. First of all, the interaction of legal systems means that the legal status of a transnational marriage or divorce is not automatically the same in both countries. If spouses in a trans-

36 This term has been changed to five years in 2012. However, all interviews in this study were conducted before this reform.

37 http://www.moiegypt.gov.eg/English/Departments+Sites/Immegration/ForignersServices/EkametAlAganeb/residence5/ accessed November 2011.

national marriage aim for recognition of their marriage or divorce in two legal systems, knowledgeable and sometimes expensive action is required, implying that elements of social class are relevant. The interactions of legal systems have different consequences for spouses, based on gender and nationality. As the example of the recognition of *talaq* divorces demonstrates, it can be more difficult for men to get their Egyptian or Moroccan divorce registered in the Netherlands then for women, in some cases even making it impossible for Egyptian or Moroccan men (before 2004) to divorce in the Netherlands at all. The recognition of Dutch divorces in Egypt or Morocco, especially before 2004, is more of an issue for women, especially if they aim to remarry.

Migration law and nationality law restrict the possibilities for transnational couples to choose their country of residence. At the moment of divorce, dependent residency can mean that the foreign spouses may need to leave the country as well as the marriage. Dutch spouses in transnational marriage have easier mobility and access to Morocco or Egypt than Egyptians and Moroccans to the Netherlands. Interactions between legal systems also influence the relative power positions of spouses and sometimes provide spouses with possibilities for strategic action, using so-called forum shopping. The question remains how and why the spouses in this research, divorced from transnational Dutch-Moroccan and Dutch-Egyptian marriages, actually used the different family law systems in their divorce. This will be the topic of the next chapters on divorce, children and financial matters.

Chapter 4. The transnational divorce process[1]

4.1 Introduction

As we have seen in chapter 3, there are multiple possibilities for transnational couples to arrange their divorce. In this chapter, I analyse how the interviewees look back on the transnational divorce process, which decisions and steps they took and in which country. The main question will be: *how do spouses arrange their transnational divorces, and how does this relate to law in the different legal systems?* Many decisions which inform the divorce process have already been taken at the moment of marriage. In this chapter, I aim to demonstrate how the differences in context between mixed and migration marriages, as introduced in chapter 2, informed some of the choices respondents made when arranging their marriage and divorce as well as the stories interviewees tell about getting divorced. In analysing these choices, I will pay specific attention to the role of law as well as images and perceptions of the legal systems of the countries in the stories of the interviewees, using the concept of legal consciousness.

This chapter will take a chronological approach, starting at the moment of marriage and describing the divorce process step-by-step. I will start by discussing how the respondents conducted several kinds of transnational marriages. As has been outlined in chapter 2, there are significant differences in context between mixed and migration marriages. *'Urfi* marriages are important in the Dutch-Egyptian context of mixed marriage; these informal marriages have some distinct legal differences from formal marriages which influence the transnational divorce process. Secondly, the reasons given for divorce will be analysed, focusing on the transnational aspects of the stories of the spouses in which they explain the end of their marriage. Thirdly, a discussion follows of the divorce procedure and the choices spouses made with regard to timing, finding a lawyer and whether the divorce took place in one or both countries. Lastly, I will go into the issue of legal consciousness, discussing the images and perceptions of law and the different legal systems in the stories of the interviewees and how these informed some of the choices spouses made.

4.2 A Transnational Marriage

> R: How I met my husband? He is from my family. [...] The first year, when we came here, in Morocco, permanently, my father said: we will just stay here, in Morocco. And then it was like: my younger sisters were allowed to go to school. But I was 17 years old. How could you [do such a thing] to a 17 year-old? I could hardly speak Moroccan. So I was not allowed to go to school. Dutch was of no use, because nobody speaks Dutch. And English, in those days there was no English education or anything. So the only option for me was to get married. Engaged. So when he asked for my hand, my father said: 'well, it's such a good guy. He's a good husband

1 Parts of this chapter have also been published in Sportel, forthcoming.

> for you. He does not smoke. He has no bad [habits]. So, he will be a good husband for you, you should take him.' And you saw what my father is like. I can't say no to him. [...]
> In itself my mother and [future husband] get along fine. But I said to my mother: how can I spend my life with him? He is my opposite. He's not my type. 'No', she told me. 'No, you'll manage. He's very kind, and he's this, and he's that.' And at some point I thought: what would I do here, in Morocco. I don't have an education. I cannot go back to the Netherlands. I'm just stuck at home. Well, then I gave up. I told them: do as you like. Then they began to arrange for the marriage. After a year-and-a-half. First we had the engagement party. Then the wedding. Well, and then my catastrophe began. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

> R: I was a cultural worker in [Dutch city]. And there I taught foreigners. He was one of them. And that's how we met.
> I: So he was already living in the Netherlands?
> R: Yes, he was already living in the Netherlands. He already came to the Netherlands when he was 18. So, well, he wanted to learn some more Dutch. Afterwards I learned they came for the girls [laughs]. Well, that's how we met. And I thought he was interesting, and fascinating, and I had always wanted to visit Egypt. So I thought, I will learn about the culture, because I'm also interested in anthropology, in other cultures.[2] So I thought, well, that's interesting. Not that I was really in love with him, but he was a handsome man. He is a handsome man. He has intelligent eyes. Yes, a handsome man. From Egypt. Moreover, I was already 27. I thought it was time to commit myself. I had already had a few relationships. They always failed, and, well, then you start to come across as desperate. So well, in fact, those were the reasons. (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands)

These two quotes on the one hand demonstrate the diversity in the transnational marriage and divorce stories in this study, while on the other hand they show some striking similarities. Both women had been unhappy in their marriage and, as will be discussed in the next chapter, both had experienced violence in their relationship. Looking back on the beginning of their marriage, being asked how they met their former spouse, they both tried to explain their 'bad decision' from being desperate in choosing a marriage partner they did not love, although for different reasons. However, there is a notable difference between the two stories. Whereas Jamila married a good husband 'from the family', Margriet chose a handsome, exciting man from another culture her parents initially did not approve of. Whereas Jamila explained that she gave in to her parents to marry the obvious partner, Margriet explained that she chose a more unusual husband. These two stories represent a recurring pattern in this study. On the one hand, in 'migration marriages', spouses marry someone from the same ethnic group, sometimes even belonging to the same extended family or village, but raised in another country; whereas in so-called mixed marriages the marriage does not only cross state boundaries but also ethnic or religious barriers. Of the 26 interviews in this study, 17 were with spouses from a mixed marriage. All but one of the

2 We had just discussed my background as an anthropologist.

11 Dutch-Egyptian divorces were mixed couples, whereas seven of the 15 Dutch-Moroccan divorced were mixed, the others being migration marriages. Most mixed couples consisted of a Dutch woman and a Moroccan or Egyptian husband. In two cases the husband was the Dutch partner of an Egyptian or Moroccan wife. Most migration marriages consisted of a husband who had grown up in the Netherlands and a wife who had grown up in Morocco or Egypt. In three cases out of eight the wife was the Dutch partner. As has been discussed in chapter 2, there are differences between these two categories of marriage with regard to the context, especially the social and cultural distance between the partners and certain negative discourses surrounding mixed and migration marriages. These differences in context have an impact on how spouses frame and experience their marriage and the reasons for divorce. Moreover, they also inform some of the decisions spouses have taken with regard to the arranging of the legal marriage and divorce.

4.2.1 Mixed marriages

Mixed marriages between a native Dutch and a native Egyptian or Moroccan partner – the largest group in this study – involve a crossing of ethnic and religious boundaries. While some of the mixed couples in this research met on a holiday abroad, most met after one of the spouses had migrated for work, either to the Netherlands or to Morocco or Egypt. Many of the interviewed women reported their friends and families being worried or disapproving of their choice of husband.[3] In the interviews, Dutch women divorced from both Egyptian and Moroccan men regularly referred to certain legal precautions they had taken, or felt they should have taken, at the moment of marriage:

> I: Did you have any special conditions in the contract?
> R: Yes. I included certain conditions with regard to divorce, second wife. I need to think: to be free to work, free to travel; and I included a stipulation that, in case I die, part of my money would be for my children. I have two sons in the Netherlands. Otherwise, everything would go to my husband's family, because it is an Islamic marriage.
> I: ok
> R: So I sorted out everything well beforehand, gained more in-depth knowledge of the law. I indeed bought a readable book in the Netherlands to see what all the rules are like, for men and women. There have been certain reforms that women get more rights if they marry. (Inge, Dutch woman divorced from Moroccan husband, no common residence during the marriage)

Framing her marriage and Moroccan family law as 'Islamic', Inge had obviously felt a need to inform and protect herself from its gendered effects. She started reading about Moroccan family law.[4] The text on inheritance in the Moroccan family law

3 I will return to the role of the social environment in chapter 8.
4 The informant did not remember what book it was exactly. I expect it might have been the Dutch translation of the Moudawana by Berger (2004).

consists of a long and complicated enumeration of all kinds of family members, from which Inge easily could have gotten the impression that her husband's family would inherit everything. However, from a legal perspective, the stipulation about inheritance does not make sense in Morocco. As Inge was a Christian, her husband, a Muslim, could not inherit anything from her. And even if she would have converted to Islam, he would only have inherited a small part of her property, the rest would have been inherited by *her* children and *her* other family members.[5] In either case, the Moroccan family-in-law would not inherit from her. Moreover, as they were planning to live in the Netherlands, and as Inge's property was located there, Dutch inheritance law would have been applicable. In the Netherlands, her husband would inherit all property upon her death. Her children could claim their shares only after his decease, if any of the property was left by then. Thus, to make sure her children would inherit, Inge should not have included stipulations in her Moroccan marriage contract, but in a Dutch will.[6] As she considered her marriage an Islamic one and Islamic family law as problematic, she only informed herself about Moroccan family law, completely missing these aspects of Dutch law. Crossing the marked boundary between Muslims and non-Muslims, as well as between the Netherlands and Morocco, negative discourses on Islamic family law seemed to have had an effect on her legal consciousness and, subsequently, on the way she arranged her marriage.

A second interviewee took another approach in reaction to the fearful stories circulating among the Dutch community in Egypt, as described in chapter 2. Monique, a Dutch woman living in Egypt, intended to marry in the Netherlands, instead of informing herself on, and taking measures to 'protect' herself in, Egyptian family law:

> I: Did you ever consider getting married?
> R: To get married in the Netherlands, yes.
> I: To get married in the Netherlands?
> R: But not immediately, after a while. We never considered getting married in Egypt. I would not have done that. Because then you lose all your rights. I know what it is like with an Egyptian. And all those stories you hear. And the money. I did not even know Noor [Stevens, from NGO *Bezness alert*] back then. I know that if you have a government marriage, or get married at the embassy, you're stuck there anyway. And if you've got children you could never get them out of Egypt. It was clear to me. If we get married, we get married in the Netherlands. He also had a [European] passport, so that wasn't a problem. When he left me on [date] I was busy arranging all his paperwork for the immigration. (Monique, Dutch woman separated from Egyptian partner)

In this story Islam is less prominent than in the previous one. Instead of Islamic family law, Monique saw harm in an Egyptian marriage. She feared losing all her 'rights' and being stuck in Egypt the moment she would get married there. This fear

5 Inge was already too old to conceive new children with her Moroccan husband.
6 For a more elaborate discussion of this case see: Sportel, forthcoming. For more information about Moroccan and Dutch inheritance law see Kulk 2013 and Rutten 1997.

of losing unspecified rights upon marriage in a foreign family law system, of becoming a person without any agency, awards an enormous though unspecified power to Egyptian family law. Monique aimed to avoid being subject to this power by concluding her marriage in the Netherlands. From a legal perspective, it is hard to say whether this would be an effective strategy. First of all it remains unclear which rights are at stake here. It is true that a marriage under Egyptian family law grants *other* rights than under Dutch family law. In Egypt, there is the obligation for maintaining the family lies mostly with the husband, whereas in the Netherlands this is a communal responsibility of both spouses, continuing after divorce. Egypt has only very limited provisions for spousal maintenance after divorce, and only for wives, and no communal property regime. But as Monique was more prosperous than her husband-to-be, she would actually be better off financially in Egyptian family law. Moreover, these are not rights one *loses* at the moment of marriage, as they do not exist beforehand. Secondly, apart from losing rights Monique also refers to 'being stuck in Egypt', and not being able to get (future) children out of Egypt. In Egypt, wives have for some time needed permission to travel from their husband. Egyptian law has repeatedly been changed in the last years with regard to this aspect. However, in practice, this permission is limited to permission for obtaining a passport (Kulk 2013: p. 166), which, as a Dutch national, would be no problem for Monique. During the fieldwork, I have only once heard about a Dutch woman who was questioned when leaving Egypt on her own, and she did manage to leave the country. With regard to children, both the Netherlands and Egypt would require permission from the father for a mother to be able to migrate from the country with the children. I will return to this issue in chapter 6.

These two cases are very clear examples of how negative and frightening images of Moroccan/Egyptian or, in some cases, Islamic, family law prompted some of the respondents in mixed marriages, especially those concluded more recently, to take certain precautions at the moment of marriage. However, although most respondents from mixed marriages referred to these negative discourses on Islamic family law, only a few actually took legal action, for example by including conditions in the marriage contract.[7] For example:

> R: You don't think about divorce when you are getting married, right? [...] I mean, you don't think about that. That's also one of the reasons women do not demand the right to divorce in their contract. You should just put it in. I mean, a man can do it, why shouldn't you be able to? Because a man has a right to divorce just like that. He does not have to do anything for it. So you should be able to do it too. [...] Basically you don't think about it of course, but I have to say I think a lot of women do not realise you can put something like that in a contract. (Conny, Dutch woman divorced from Egyptian husband, living in Egypt).

7 I will discuss the different types of conditions in the marriage contract, and how they were used, in chapter 7.

Conny emphasises the importance of a condition which permits the right to divorce from the perspective of gender equality, even though it is an unlikely thought at the moment of marriage. She only became aware of the possibilities of including conditions in the marriage contract after she married her first Egyptian husband, in the 1970s. As it took her a lot of time to divorce from her first marriage to an Egyptian husband, Conny made sure to put this condition in the contract of her second marriage to her current Egyptian husband. Interestingly, at this point in the interview, she does not seem to refer to any threatening discourses about Islamic family law, instead she takes a more light-hearted tone.

Discourses on Islamic family law and mixed marriages, which prompted some interviewees in mixed marriages to include conditions in their marriage contract, have also had an impact on the reasons for divorce and the subsequent divorce procedure, especially in the context of informal marriages. Below, after discussing migration marriages and informal marriages, I will further outline the role of ethnic/religious differences in the reasons interviewees from mixed marriages gave for their divorce. I will return to the issue of financial conditions upon marriage more extensively in chapter 7.

4.2.2 Migration marriages

The crossing of boundaries and othering experienced by some mixed couples was far less an issue in migration marriages than in mixed marriages. Similar to some mixed marriages, many spouses from migration marriages met on holiday in Morocco. As illustrated by the story at the beginning of this chapter, many partners in migration marriages marry spouses that feel 'close', from the family or the village, from the same religious background or other communities or regional identities they belong to. Naima, a Dutch-Moroccan woman explained how her parents were the 'typical migrant family':

> I: How did you meet your husband?
> R3: Well, I did not really meet him. I'm 33 now. I was the first child in our family. I was actually from the first batch of second-generation [migrants] in the Netherlands. In that respect there is a huge difference between how my parents handled me and my younger sister, who's 22. That's just a comment, it just played a big role. My parents are just the classic example of migrants who went to the Netherlands. First my father and then me and my mother, I was five. He had us come to the Netherlands. And well, again the classic story. Of course we had loads of problems. My parents also with raising their children of course. Because, well, of course they had their norms from the Moroccan culture. And I grew up in a Dutch society. (Naima, Dutch-Moroccan woman divorced from Moroccan husband, living in the Netherlands)

When asked how she met her husband, Naima starts telling the story of her migration to the Netherlands, framing her parents as typical migrants. This introduction serves as an explanation of the choice of her parents to force her to marry at a very young age, a controversial issue taking a prominent place in the Dutch discourses surround-

ing migration marriages. After having described how, during a summer holiday at age 17, men came to ask for her hand the interviewee relates how she got married:

> [My parents thought] like, get married as soon as possible, before she'll cause some kind of scandal. [laughs]. [...] At that moment I also saw marriage as an escape. I'm really honest about that. My parents married me off, in the sense that they confronted me with a choice. During a holiday they said: you're getting married, but you can choose yourself with whom among the people who have come to ask. They gave me that much. But you really have to get married. And I, *deep down*, of course I just felt that there is no one here who I know will understand me or whom I would actually want to marry.[8] But let's do it, because this roundabout way is an easier way to demand my freedom. It would be easier to say something to my husband than to my parents. [...] A boy came. I knew him, he lived in our neighbourhood [in Morocco]. I did not feel anything, the only thing he had was just that he had a sense of humour. I could laugh with him. He was a friend of my uncle. That was all I shared with him. But well, in those circumstances... Then matters were all settled quickly. Within about two days. [laughs]. And then I went to sign. And the beauty of it all was, I'll really never forget it, at the moment I was signing I thought: what are you getting yourself into? What are you doing? (Naima, Dutch-Moroccan woman divorced from Moroccan husband, living in the Netherlands)

Naima married someone who felt close, 'from the same neighbourhood', even though she had not been actually living in that neighbourhood for over a decade. In her story, she explains events from the position of her parents, how it was a logical choice in their situation, even granting her the choice of picking her own future husband from among those who came to ask for her hand. Moreover, she also claims agency. Even though she was married off as a minor, she clearly shows what she aimed to gain from the marriage and how she signed the contract herself. Similar to Jamila, despite being pressured by her parents, she took the decision herself.

Another interviewee, a Moroccan woman, met her Dutch-Moroccan husband in Morocco, at the house of a friend:

> R: I was still going to university. And I had a good friend, we went to school together, and afterwards we did the same study. We kept contact, and that summer she invited me to come to her home. She had moved to another city. My parents consented, so I went to her. She needed a babysitter for her child for a few weeks. [...] He [the future husband] is her husband's brother. And he came to them during his holiday. He was so funny and so nice. And I was [of an age] to get married. And he was nice with the children. He's really a charming person. I thought, this is someone I would want to marry. And it went [on] for three months and then he promised me to get married. He came back to Morocco and we got married. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband).

In this story, the spouses first met at the home of a friend, both spending time there during the holidays. He was the brother of the husband of her friend. Although he

8 'Deep down': English used in original quote.

grew up in the Netherlands, Rabia does not describe him as foreign, or from another religion. However, she goes on to describe cultural differences between them as one of the reasons for their separation. These differences, though, are related to his regional background in Morocco, not to his having migrated to the Netherlands at a young age. I will return to this more elaborately below, when discussing reasons for divorce.

4.3 Informal marriages

Some respondents in this study, all from Dutch-Egyptian mixed marriages, did not have a formal, state-registered marriage. Instead they concluded an informal *'urfi* marriage. This choice has certain consequences for their legal position and divorce options in both the Netherlands and Egypt. The *'urfi* marriage is a private marriage contract, which is not registered by the Egyptian authorities.[9] Likewise, it is not valid under Dutch law, and can thus not be recognised in the Netherlands. In Egypt, *'urfi* marriages between Egyptians are often used in secret relationships, for example when parents do not agree or in case of a second marriage (Sonneveld 2009, p. 130; Abaza 2001), or in 'semi-secret' second marriages between men who already have a first wife and divorced or widowed women (Sonneveld 2012). In relationships between foreign women and Egyptian men, however, *'urfi* contracts have a much more public function. These marriages can be religiously valid, but, more importantly, they protect the couple from police interference and enables them to share a hotel room or rent an apartment together. The large numbers of *'urfi*, marriages in Egyptian tourist resorts can be explained from what Behbehanian (2000) calls 'intense and aggressive police activity'. They are used as a safety measure to be able to publicly show a mixed relationship without being harassed or arrested, and without all the obligations connected to an official marriage. This context of policing was also referred to by some of the interviewees, and for one interviewee it was the main reason for getting married:

> When it started it was great fun. Because he was a tour guide, and worked with [employer]. So we tried to see each other in Luxor, or Aswan, Hurghada or Sharm al-Sheikh. The only problem was, if you want to be together in a room, you need to be married. If you are a non-Egyptian couple, it's no problem. But in our case we had to. So we were married *'urfi* pretty soon. [...]
> We got married *'urfi* in a hotel lobby. I was wearing a black dress. I still have it. [...] And [ex-husband] wrote it down himself. Now I've got an exciting contract, an *'urfi*-contract, but he wrote it down himself. Two friends were witnesses, and we signed and that's it. (Janneke, Dutch woman divorced from Egyptian husband, living in Egypt)

9 See for a more elaborate discussion of types of informal marriages in the Middle East and the Netherlands: Moors 2013.

In Janneke's story, the marriage was an accidental, minor occurrence, a practical matter to be able to share a hotel room. Her husband wrote the contract himself, and she did not seem to be very much occupied with the actual text or conditions which could have been included, finding the entire happening 'exciting'. But this did not mean the moment of getting married had no meaning to her, she had even kept the dress although the marriage took place almost 20 years before and the couple had been divorced for several years. Later, after the couple had formalised their marriage, they kept the original *'urfi* marriage date on the marriage registration. Without the context of the policing of non-married mixed couples, Janneke would probably not have married so soon after the start of her relationship. Thus, the *'urfi*-contract can also be seen as a first step to a 'real', formal marriage, leaving open the possibility to break off the relationship and destroy the contract or to take steps to formalise the marriage, by registering it with the Ministry of Justice in Cairo.[10]

Interestingly, I found that in Hurghada, a semi-legal form of marriage seems to be developing, between the formal, state-recognised and the informal *'urfi*-marriage. Here a home-made *'urfi* contract is not sufficient for hotel owners, landlords or local authorities to permit a couple to be together publicly. Couples need an *'urfi*-contract signed and stamped by a lawyer. A market has thus evolved for lawyers offering these services to transnational couples. They can provide standard bilingual contracts. Both husband and wife need to provide copies of their ID and a photograph.[11] This procedure gives an official tone to a marriage form that is otherwise characterised by a lack of substantive involvement of authorities. In his study of Dahab, another resort town, Abdalla also describes lawyers overseeing *'urfi* contracts (Abdalla 2004, p. 8-9). Still, an *'urfi* marriage contract stamped by a lawyer is not valid in the Netherlands.

In Egypt, some couples arrange for an *'urfi* marriage far sooner than they would normally have formalised their relationship. In this specific context, *'urfi* marriages also play a prominent role in the stories on false love or '*Bezness*', a strong frame some of the interviewed spouses use to explain the end of their marriage. I will now go into this and other reasons interviewees give for their divorce. As we will see below, these different types of marriages can have an impact on the reasons for divorce as well as the legal divorce process. In the following we will see how interviewees explained the end of their marriage and started the divorce process.

10 At the moment of registration the original date of the *'urfi*-contract can be registered as the marriage date. Especially for couples residing in the Sinai or Upper-Egypt, the distance and costs involved in travelling to Cairo and taking time to do all the necessary paperwork (Kulk 2013) might involve a considerable investment of time and effort.

11 The lawyer is paid for this service. A Hurghada-based lawyer I interviewed charged 50 euro but I have heard reports of others charging more, while Dutch interviewee Monique mentioned such contracts costing 100 Egyptian pounds, approximately 14 euro.

4.4 The end of the marriage: Reasons for separation

Many of the interviews in this study were painful narratives of conflict, crisis or abandonment, eventually leading to the end of the marriage and the separation of the transnational couple. Some of these stories had distinct transnational elements, for example conflicts arose over country of residence or marriages ended because the migration process of the foreign partner failed, which meant some couples divorced before having ever lived together. Other reasons for divorce were similar to those in 'regular', non-transnational marriages, such as one of the spouses meeting a new partner or growing apart.[12] However, in the context of transnational divorce, some spouses framed such 'normal' conflicts in terms of religion, ethnicity or culture. An especially strong frame, which changes the entire perspective on the marriage, is the frame of false love or '*Bezness*', encountered especially in the context of *'urfi* marriages. Below I will discuss three main reasons for divorce related to the transnational context: conflicts over country of residence, framing marital conflicts as cultural and the frame of false love.

4.4.1 Country of residence/failed migration process

One of the main characteristics of transnational marriages is that one of the spouses has migrated. In about one third of the cases in this study, this migration had already happened before the start of the relationship. In the other cases, one of the spouses had to leave his or her country to set up a communal household. When migrating to the Netherlands, procedures to gain legal residence can be long and complicated. Not all marriages in this study survived this process. Specific for some Dutch-Moroccan migration marriages is the long waiting period between the contracting of the marriage and the start of marital life in a communal household. As most couples intended to reside in the Netherlands, they needed to go through long and complicated immigration procedures. To start this procedure, a legal marriage was contracted relatively soon, sometimes only a few weeks after the couple first met. Then came a period in which the couple is legally married, but not yet living together as a married couple. This time is used to arrange all the formalities to get the Moroccan partner into the Netherlands. The couple is not socially married until the marriage has been publicly celebrated. This could happen both before and after the migration process. This discrepancy in time and space between the legal and social marriage, and the limited social value of the legal marriage, can lead to difficulties when a couple wants to discontinue the 'engagement'. Because they have already been legally married a full divorce is necessary (see also: Sterckx & Bouw 2005, p. 89-90; Buitelaar 2000, p. 177). For example:

12 See for an overview of the main reasons for divorce in the Netherlands (Clement, Van Egten & De Hoog 2008, p. 43).

> R: Then [after the marriage] I returned to the Netherlands. And there, at a certain point, I just told my parents, opposing them again: 'I don't want that man. I just don't want that man'. Well, my parents of course really were like: 'you're just crazy. You don't think you can back out now? Because, well, you're just married now. What has got into you?' [...] That year I did not want to go to Morocco anymore. Without being divorced. Because I was, like, if I go to Morocco, I have to really [do] the wedding, and then really just being married. (Naima, Dutch-Moroccan woman divorced from Moroccan husband, living in the Netherlands)

Naima makes a distinction between 'being married' [the legal marriage] and 'being really married' after the wedding and migration. Her parents, however, see the second as automatically following the first, and ridicule her refusal to continue the migration process. Because of this conflict, Naima left the parental home and lived her life in the Netherlands without ever starting the migration process for her Moroccan husband, meanwhile avoiding Morocco for years. Only after she had a child (from a new relationship with another man) and wanted to visit Morocco again, she started to arrange the divorce from her Moroccan husband. In the end, Naima had to go through a complicated divorce procedure with a husband of whom she could 'hardly remember his face'. Other marriages in this study, both mixed and migration marriages, were also dissolved before the couple managed to set up a marital home in one or the other country. However, in these cases, the couples had started their social marriages as well, spending time together during prolonged visits to each other's country.

Getting married sooner than would be the case in a non-transnational marriage is not limited to Dutch-Moroccan migration marriages. De Hart has described how mixed couples confronted with Dutch migration law also sometimes chose to marry shortly after the start of their relationship in order to start or to simplify the migration process (de Hart 2003: p. 163-164). Similar to Dutch-Egyptian *'urfi* marriages concluded in order to be able to publicly spend time together, it is the specific circumstances of being a transnational couple confronted with certain rules or laws which prompts couples to marry soon after the start of their relationship. But whereas in Dutch-Egyptian *'urfi* marriages spending time, especially nights, together is a central motive, this is not the case in the Dutch-Moroccan case discussed above, where the wedding and subsequent social marriage had not yet taken place. Similar to what Buitelaar and Sterckx & Bouw describe, the legal marriage is not perceived as the real marriage (Sterckx & Bouw 2005, p. 89-90; Buitelaar 2000, p. 177).

Conflicts over the country of residence were not limited to entry procedures to the Netherlands:

> R: Well, in the end, he wanted to go to the Netherlands. And I did not want to go to the Netherlands anymore. So that's also one of the reasons we divorced. And now he lives in the Netherlands, and I live in Egypt. [laughs] (Conny, Dutch woman divorced from Egyptian husband)

> R: When we married we agreed that she would come to the Netherlands within a few years. Then I did not consider it logical as such to marry if you do not live together. [...] But well, she said that she would certainly do so in a few years, and immediately if she had a child. Well, then after a while we had a child, and it turned out she did not [migrate]. Well, then our relationship deteriorated considerably over the years. I had actually already wanted to quit for quite a while, but I did not do it. Because of the child, of course. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

In both these Dutch-Egyptian cases, both partners were mobile, highly-educated professionals, able to travel between the two countries without much difficulty. When they could not agree over the country of residence, this caused tensions in their relationship which eventually led to a divorce. Thus, when marrying transnationally, the issue of migration can cause conflicts in transnational marriages in two ways: when the spouses cannot agree on the country of residence, or when they do agree but do not succeed in establishing a communal residence in the country they chose. This raises questions with regard to where and how to start the divorce procedure. I will return to this issue below.

4.4.2 Framing marital conflict as cultural

When looking back on their marriage and divorce, most of the informants try to explain what happened during their marriage and why it ended, telling or retelling the story of their marriage and divorce. In many of these stories, especially those of mixed marriages, cultural differences were a recurring theme. Speelman discerns several context levels on which differences can be placed, ranging from personal aspects such as character and education, to more general aspects such as culture or religion (Speelman 2001). One interviewee, after discussing a wide range of conflicts on matters which she interpreted to be culture related – from child rearing to dealing with medical problems and her husband's bad temper – summarised their conflicts as follows:

> R: So there is always, always, some fuss. I really had the feeling I have been fighting some strange culture for five years. But you cannot win, because it's just ingrained (Ingrid, Dutch woman divorced from Moroccan husband, living in the Netherlands)

In this first quote, the husband is identified with his culture. Furthermore, his culture is a strange and negative one, something the interviewee had to fight against. His culture was standing between them, a barrier Ingrid could not overcome, as it was a part of him, over which he nor she apparently had any agency or control, using a very static concept of culture. Janneke, also a Dutch woman, described conflicts over cultural differences in another way:

> R: Then it became clear what our main problem was. Look, when he met me I wore short skirts and shorts. That was all right with him. I knew he was religious. He did not drink

> [alcohol]. But, I mean, I never saw him pray, and he was friendly with people. Just at a distance. But just a nice guy. But when I was his wife, it began to creep in, like, well, rather no shorts anymore. No short skirts. No wearing trousers anymore. I had a long-sleeved shirt. I didn't care for those veils at all. But in the end. I said that, well, if we would go to certain areas, out of respect, and in order not to be hassled, I would be willing to button on a headscarf. Well, I couldn't get out of that one. So I walked around wearing a headscarf, covered up. I wasn't allowed to do anything. I wasn't allowed to drink [alcohol], I wasn't allowed to dance, I wasn't allowed to smoke, I wasn't allowed to swim. I wasn't allowed anything. And it wasn't evil intent. He just wanted a Muslim wife. But of course I wasn't one. In that regard I was very naive. And I think I might not have loved myself enough. And women are tremendous pleasers. That I thus actually went along much too far. Until the moment I didn't recognise myself anymore. I was terribly unhappy. So all I did was stuff myself. I really weighed 20 kilo more than I do now. I said: this just doesn't work for me. It was just two different cultures, you know? If you have the same faith, the same sense of humour, and the same interests. Then a relationship can work. With us it was all different. And the first two fences can be leapt. But at the third you just go down mercilessly. It just doesn't work. We really tried, but it didn't work. (Janneke, Dutch woman divorced from Egyptian husband, living in the Netherlands)

Janneke also explains her divorce as a result of cultural differences, but from the perspective of her own unhappiness while trying to meet her husband's expectations. Whereas Ingrid uses the metaphor of a fight, a confrontation between cultures, Janneke's story does not portray the two former spouses as adversaries. It centres on the failure of both Janneke and her former husband to jointly overcome their many differences caused by culture and maintain their relationship. In this process, she describes losing herself, both in a mental as well as a physical way, mentioning changes in dress, as well as behaviour and weight. Apart from culture, she also refers to her gender, as she feels that being too much of a pleaser, going too far in adjusting to an impossible ideal, is a typically feminine behaviour. Her husband did not force her to change out of malice, but according to Janneke he had certain expectations that she could not meet, as she fundamentally is not what he wanted or needed: a real Muslim wife. It is a tragic story, because, despite their best efforts and despite overcoming the first problems, in the end they were so fundamentally different that this marriage failed. In this story, Janneke presents her former husband and herself thus solely as representatives of their respective cultures and gender positions, which leaves little room for the discussion of personal traits or conflicts. Even though the tone of this story is different from Ingrid's story of a cultural fight, in fact, both share the very static view of culture as being fundamental and insurmountable, downplaying individual personalities and agency.

In some other stories of mixed marriages cultural differences were almost completely absent.

> R: Well, right, I really think that she just is disturbed, and that she is troubled by a narcissistic disorder. That's what I [realised] later, after just reading things and such, and trying to understand what's going on. What I thought of myself. I'm not a psychiatrist. But well, in my

> view, the picture fits well, as an explanation. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

Like the other respondents, René is looking for an explanation for his former wife's behaviour, which in his eyes caused the breakdown of their marriage. But instead of placing their differences on a cultural level, he considered his former wife's behaviour a personal characteristic, finding explanations in the symptoms of a psychiatric disease. This is remarkable because of the marked cultural boundaries that are crossed in a mixed marriage, in which cultural difference is often seen as one of the main characteristics. In the Netherlands, Dutch and 'Islamic' culture are framed as almost directly opposite, a context inviting explanations of cultural difference. There are two possible explanations for this absence of cultural explanations in René's story of his divorce. First of all, many of the negative discourses on mixed marriages and cultural difference are highly gendered, seeing especially Dutch women with Muslim husbands as a problem, as detailed in chapter 2. As a Dutch man with an Egyptian wife, René has a different position, which might contribute to his lack of interpreting conflicts as cultural. In order to be able to marry in Egypt, he had converted to Islam officially, at least formally crossing the religious border. Secondly, in this specific Dutch-Egyptian case, elements of social class also played an important role. René's wife came from a wealthy upper class background and family, while he came from a lower-middle class family, but he had become a wealthy businessman. Both highly-educated and mobile professionals, they both had experience with working and living abroad. This also meant that the negative frame of *Bezness*-marriages, containing references to financial gain or visa, did not apply.

Ascribing differences to culture was not limited to mixed couples but were also occasionally mentioned by interviewees from Moroccan migration marriages:

> R: People from [region] are too strict. A wife means nothing to them. They always consider the rights of their mother. His mother takes first place. And the wife always last. She hardly has a say. I really noticed that, after 11 years of marriage. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

Jamila, part of whose story formed the start of this chapter, was pushed by her parents to marry a husband from her family, a far cousin from a town in the Moroccan Rif mountains. Her own parents came from another part of Morocco, and she grew up in the Netherlands. In this quote, as well as in other conversations we had apart from the interview, she frequently referred to her husband as being from this town, and thus having a different culture than in the Moroccan city where she lived. Although she also spoke to me about cultural differences between the Netherlands and Morocco in general, with regard to her husband she blames mostly his, and her mother-in-law's, regional origin for mistreating her, and paying no respect to her as a wife.

There are more Moroccan or Dutch-Moroccan interviewees referring to cultural differences within Morocco instead of between the Netherlands and Morocco:

I: You just told me your parents opposed the marriage?
R: Yes, because it was someone without money. He wanted to get married with nothing.
I: Did he have an education?
R: He also didn't have an education. But I didn't know that. In my environment, everybody had an education. At least secondary education. So, I thought, he also has secondary education. But he went to Europe early, he only had elementary school.
I: Only elementary school?
R: Yes, and without success. [laughs]
I: That's a big difference then.
R: Yes, a very big difference. But it wasn't just the level of education. Culture was also a big difference. He grew up in a village, and I grew up in a city. Therefore we clashed from the beginning. But I wasn't strong enough to step out. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

Although the interview question regarding difference may have been pushing Rabia towards discussing educational difference, the subsequent discussion took an interesting turn. When mentioning cultural differences, this last woman refers to a difference in regional *Moroccan* culture, even though her former husband had been living in the Netherlands since his teens. She goes on to describe how, after her arrival in the Netherlands, she felt estranged from other Moroccan migrants, who mostly came from another regional and class background than she. In this case, the boundary crossed is not so much a national or ethnic one, but closer related to social class and rural and urban differences.

These quotes show how respondents make use of the frames of cultural, class or personal differences to explain their marriage ending. However, informants frequently used more than one frame. Many felt the need to explain their divorce, often through focusing on their former spouses' behaviour, shifting during the interview between explaining their partner's behaviour as a consequence of him or her being part of a group or culture and as an individual with a certain personality. In one interview, for example, Margriet, a Dutch woman discusses the behaviour of her Egyptian husband. Because of his business, he was often absent, leaving her alone with the children in the Netherlands. On his business trips, he frequently slept with other women. In the interview, Margriet refers several times to the fact that 'Egyptians are allowed to have more than one wife' when discussing her former husband's extramarital affairs. Furthermore, she refers to culture in conflicts over whether their daughter should be allowed to leave the house, and about how she and the children were secretly drinking alcohol and eating pork in the husband's absence. But she also speaks at length about her former husband's controlling and manipulative behaviour without referring to culture at all, for example: 'All those years, I was really manipulated and indoctrinated in my marriage. Kept under his thumb. I lost myself' (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands). Similar to Janneke's story, as discussed above, Margriet refers to losing herself in the marriage, but not due to a foreign culture, but due to the controlling and manipulative personality of her specific, individual husband. Several other authors have also

described the way mixed couples and their environment racialise or culturalise difference, or in Speelman's (1993) terms place differences on the level of culture, race or religion, instead of attributing them to personal character, educational background or language (e.g.: Breger & Hill 1998; Kamminga 1993).

4.4.3 False love. Marriage as business

A particularly strong frame used by some interviewees to explain their divorce is that of 'false' love, of marriage as a way of exploitation or gain for one of the partners. This issue, relevant for both migration marriages as well as mixed marriages includes but is not limited to what NGO *Bezness alert* calls *Bezness*. The Dutch or Dutch-Moroccan partners in these marriages are seen as attractive because of their financial or residence status, not because they are loved:

> R: Here [Morocco], in their eyes, those of the Moroccan community, I was already almost ripe for marriage. So then all kinds of people started asking for my hand during the holidays. Also from here [Morocco]. And that was just very much with the idea of: if we get to be the one [to marry her], then we get a license to get to Europe. (Naima, Dutch-Moroccan woman divorced from Moroccan husband, no communal residence)

Naima describes herself as a 'ticket to Europe', already when she was still in high school. From the beginning of her (arranged) marriage, she knew that her Dutch residency was an important incentive for her former husband to marry her. As has been discussed above, she did not go through with the immigration process and soon lost contact with her Moroccan husband. However, years later, when Naima announced she wanted a divorce her husband refused:

> R: Because at the moment I told him: 'I want to divorce from you', he didn't want to. First he claimed that he supposedly loved me, you know, and that I should try. Blah-blah. [...] I knew damn well that for him [love] didn't have to do anything with it. Later he kind-of admitted it to me. Because he said: then you'll have to pay me 30,000 euro. 30,000 *gulden* it was back then, it was in *guldens*. And for that he would have wanted to divorce me. (Naima, Dutch-Moroccan woman divorced from Moroccan husband, living in the Netherlands) [13]

According to Naima, her husband tried to put a claim to her based on a frame of love, while afterwards he demanded money to compensate for the loss of his opportunity to migrate to the Netherlands. He was using his relative power position under the old Moroccan *Moudawana*, in which it was far easier for men than for women to initiate a divorce. She refused to pay the price he asked, deciding to resolve the divorce herself. It was especially the reference to love that angered her:

13 30,000 gulden is approximately 13,600 euro. The gulden (guilder) is the old Dutch currency, before the euro was introduced in January 2002. This change in currency confused the stories of several interviewees.

> R: [...] because he told me: 'Listen. Bring me to the Netherlands and I will divorce you.' I really told him like, and I meant it with every nerve in my body: 'that's the last thing I would want to do. I absolutely won't do it. Even if I never could come to Morocco, I really wouldn't do that'. I must say I was already disillusioned, but back then I really had the idea that marriage should be connected to love. I had a very romantic idea, an idea I must say. I was actually very angry that he handles marriage and love in such a way. I thought it was very hypocritical. Because I had the idea that our religion is based on love. And those [men like former husband] give a very different interpretation to love from the proper sense of the word. (Naima, Dutch-Moroccan woman divorced from Moroccan husband, no communal residence)

Again, Naima seems to distinguish between the legal marriage, which she concluded under pressure by her parents, and the 'real' marriage, starting a life together in the Netherlands. The real marriage should be based on love, a concept which for her also carries a religious meaning. However, unlike *Bezness*-stories, Naima did not love her husband, and she knew he did not love her when she married him. Thus, the story misses the element of discovery and deception that characterises the *Bezness*-stories.

The '*Bezness*-stories' in mixed marriages take a slightly different angle. Looking back on their marriage, some women felt they had been deceived by their former husbands. They say they now realised that his intentions were not a 'real', love-based marriage, but financial gain or a residence status, while they themselves did start the marriage with the proper reasons:

> [...] Actually, apart from losing my money, I escaped unscathed. And the real main reason I divorced, [although] he never dared say it to my face, is that I had the idea it was actually about the visa to get to the Netherlands after all. At the moment the visa wasn't awarded, then he subsided into a kind of lethargy. As if his world collapsed. (Inge, Dutch woman divorced from Moroccan husband, no common residence during the marriage)[14]

Inge reinterprets her experiences almost exclusively by using the frame of false love to explain her former husband's behaviour and give meaning to her experience of loss. She blames her husband for not being honest with her, not telling her to her face that it was all about the visa after all, while only this could explain his behaviour

14 As I have demonstrated elsewhere (Sportel 2011), the Dutch-Moroccan networks of organisations can also be considered a social field, producing norms with regard to transnational divorce. In this network of organisations, two norms were widely shared. Firstly, most organisations seemed to consider transnational divorce mostly an issue of women, not men. Framing transnational divorce as a women's issue brings the focus of the participating organisations to protecting women's positions in transnational divorce. The involuntary abandonment of women by their husbands in Morocco, for example, is condemned as a divorce strategy. Secondly, the organisations share a norm of no-fault divorce. This means that they do not aim to intervene in conflicts between the former spouses, or consider the question of fault with regard to the failing of the marriage irrelevant. Instead, organisations see their work as helping clients against the complex procedures and interaction of divorce rules in a transnational context, not against their former spouse. These shared norms reflect similar national discourses and frames on family law and the rights of (Muslim) women in Morocco and the Netherlands, as discussed in chapter 2.

in her eyes. In her story is an element of discovery, only after the visa procedure fails, his 'true intentions' become clear.

In another example, Anna, a Dutch woman who came to Egypt to work in the tourist industry had been living together with her Egyptian husband for some time when she noticed that some of her possessions were disappearing. Only later she found out that her husband had been stealing from her to cover his pressing debts and alcohol abuse. Eventually she came home one day to find that her husband had disappeared, taking her jewellery and other precious possessions with him. This was the moment of discovery, which changed her view on the marriage.

> R: He always said like: 'I don't understand how those other men can do such a thing. I'm not like that, I'm honest through and through. I have never wronged someone.' In the beginning I fell for it with my eyes open. [...]. Well, now I think: 'how could I have been so blind, why didn't I see that'. Well, especially because he tried so hard for such a long period of time. To build something together. (Anna, Dutch woman divorcing from Egyptian husband, living in Egypt)

In this quote, Anna refers to her, and her husband's, familiarity with the frame of false love. Looking back on her marriage, the husband turned out to be 'one of those men' after all. Anna, blinded by love, did not see this, until the final, changing incident. Outside of a transnational context, her story could just as well have been interpreted as one of addiction and abuse or mental illness. This couple had been living together in Egypt for a year-and-a-half, and she had good contacts with his family, whom she continued seeing even after he disappeared.

The explanatory frame of false love or *Bezness* is a very strong frame, excluding all other reasons for divorce, and in hindsight it changes the entire memory of the marriage. It focuses solely on the behaviour of the Moroccan or Egyptian spouse. By deceiving and lying, they abused the real love of their wives in order to gain financially or secure residence status benefits from the marriage. As such, the frame is only accessible for and used by Dutch, or Dutch-Moroccan partners. I also collected stories from Moroccan or Egyptian spouses from migration marriages who had faced violence and financial exploitation at the end of their marriage to a Dutch or Dutch-Moroccan partner. They, however, blamed their former wife and husband individually, and did not reframe their marriage in a discourse of false love.

The *Bezness*-frame differs from the story of the Dutch-Moroccan Naima in this aspect of one-sided love and deception. She did not marry her husband out of love; both spouses knew this was an arranged relationship. However, she still despised her ex-husband's attempts to claim love for her in order to claim her help in enabling him to migrate to the Netherlands. The '*Bezness*' stories all start with true love by the Dutch wife. They share a moment of discovery, which changes the perception and meaning of the entire marriage. In retrospect these wives now, finally, see what has really been going on and that their husbands did not really love them. This also changes the relationship from a marriage between equals into a perpetrator-victim relationship. This positioning as a victim disconnects the wife from the agency she

could normally derive from her relative power position as being the wealthier, more mobile spouse. 'Blinded by love' she could not see that her husband was really 'one of those men' after all. This reframing of their marriage also enables them to relate to other European or Dutch 'victims' of swindle in Egypt. For example, at *Bezness alert* meetings or on the website, stories were also heard from Dutch *couples* who had been swindled while doing business investments in Egypt or buying property.

In explaining the reasons for divorce, respondents have used different frames in order to account for the failing of their marriage, including differences in culture, social class, gender positions or mental illness. Of these frames, the *Bezness* frame is especially strong, as after the 'discovery' of the falsehood, the entire relationship is redefined, making the Dutch woman a victim and her former husband or fiancée a perpetrator instead of equal partners in marriage. This also had consequences for how they arranged and experienced their divorce procedure. For example, three women who saw themselves as *Bezness*-victims had not just turned to the family courts. As no-fault divorce provides little space for discussing or correcting the wrongs of the marriage in the divorce procedure, these women also tried to report their husbands' behaviour as a crime, hoping to instigate criminal procedures to have their former husband punished, or they started civil procedures to get 'their money back'. Below I will discuss the divorce procedure and the steps interviewees have taken to divorce in one or both countries.

4.5 The divorce procedure

The divorce procedure involves several steps. The sequence in which respondents take these steps differs. When arranging the legal divorce, generally the first step is to find a lawyer. For some respondents this is also the last active step they take, as their lawyer completely takes over the procedure. Others are more personally involved in the subsequent divorce procedure, and in some cases multiple legal procedures over the divorce itself and related issues take place. After the first divorce procedure, some respondents go on to have their divorce recognised in the second country, while others do not.

4.5.1 Starting a divorce procedure

The end of a marriage, separation, and formal divorce do not necessarily take place at the same time, or in the same order. Some couples decided to end their marriage, file for divorce and then arrange the separation of their communal household and finances. In other cases, it took some time to start the formal divorce procedure after the relationship ended:

> R: [...] then I had to pay his debt. Because we own our house, and every time I was approached [by creditors] 'otherwise we will sell your house'. But still, I was not willing to divorce. I don't know why. But I wasn't willing to divorce. I once went to a lawyer and the first

> [hour] he explained everything. But I went home, and somehow I did not dare take that step. I don't know. I was still hoping he would come back. In the end it was a year later. Then I took the serious step. And, well, I took a [female] lawyer and applied for divorce. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband)

Respondents waited because they hoped their spouse would return, or they were still doubting whether they should return to their marriage themselves, postponing the divorce as a kind of final step. Other reasons mentioned were to wait until the children were grown, or that they only just had come around to arranging the formal divorce. In four cases respondents had not yet started the divorce procedure at the moment of the interview, even though they had been separated for some time. There are situations in which it can be important to arrange the divorce as soon as possible, as in Rabia's case, for example when one of the spouses is in severe debt and the other spouse wants to become financially independent as soon as possible, or when one of the spouses wants to remarry. In many other cases it did not make much difference in the respondents' daily lives whether they were officially divorced or not. Thus, some respondents gave priority to issues such as arranging housing, jobs or residence permits. In two cases in which the former husband was living in the other country arranging the formal divorce was even postponed for years:

> R: I never demanded a divorce because I knew I would then be in trouble with child protection. Because I know that there is a bunch [of employees] at the child welfare office, nine out of ten it's people who do not have children themselves. And who, thus, cannot judge the fact of children. That's why.
> I: Would child protection be brought in automatically?
> R: Yes. At the moment of divorce. Especially with a foreigner who is not present it is obligatory to have everything right. And because I thought raising the children was fairly [word unclear in recording] I just did not consider it necessary. (Karin, Dutch woman divorced from Egyptian husband, living in Egypt)

At first Karin was living in the Netherlands, and she did not start a formal divorce because she did not like the idea of Dutch child services, which she considered to be inadequate, becoming involved in her family. But even when the children were adults, and she had moved first to another European country and then to Egypt, she still did not arrange the divorce right away:

> R: In the Netherlands I went to a lawyer. And he said he could not do it. He could take [the case], but back then it was a very tough case. Because she [sic] would have to hire a representative in Egypt.[15] Of course, that's what you get in an international case. And that would soon mount up. So she advised me to do it in Egypt. Then I moved to [another

15 The interviewee changes between 'he' and 'she' while speaking about her Dutch lawyer. It is unclear to me whether there were two lawyers, or whether there is another explanation.

> European country], so I thought, I could do it there. Of course, that wasn't possible, because they had nothing to do with it. And then I did it [arranged the divorce] in Egypt.
> I: Did you have a certain reason to apply in the Netherlands first?
> R: Because back then, I was still living in the Netherlands. So it was the logical thing to do. But for the rest, no, not really. So when it didn't work out I thought, never mind. So I waited for quite some time, before I applied here [in Egypt]. (Karin, Dutch woman divorced from Egyptian husband, living in Egypt)

From this quote it becomes clear, again, that arranging the legal divorce had little priority for Karin. Her husband had left the Netherlands to return to Egypt for medical treatment. After her first attempt in the Netherlands turned out to be too expensive, significant amounts of time went by before each next attempt was made. She talks about the divorce more as a bothersome chore than as a something major and important to her everyday life. Moreover, in the interview she does not mention any effects, positive or negative, of maintaining the legal marriage long after her husband had left her and their children.

In two other cases, both taking place in Morocco, the respondents only found out later that they had been divorced by their husbands while they still considered themselves to be married, and lived as such. They had not been involved in the formal divorce procedure at all:

> R: I don't know why I have been so stupid. Right, one day he came to me and said: '[name] you should help me. Can you help me? We are going to do this and that, and my brother is in danger, and my mother too, and the entire house. It all depends on you. You can help us. [...] Then I went with him. He brought me to an office. There I got a white sheet of paper, and I signed it. Well, a few days later he came to pick me up again and said [...]: 'you should come with me again'. I put my signature again. At another office. Well, and a few months later I got a phone call from his family in Nador. And what do you think I heard?
> '[name], what did we hear? What happened?'
> I said: 'what's going on?'
> They said: 'Your husband has a wedding'
> [I said] 'Oh. You can't be serious?'
> They said: 'Yes, we are invited. It's next week. Next week, really, next week your husband has a wedding'. And, well, it turned out to be true. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband]

After her husband's wedding Jamila was thrown out into the street with her daughter by her husband and her mother-in-law. This was a moment of discovery, similar to some of the *Bezness*-stories, which made her start to reinterpret recent events, including the signing of papers a few months earlier. She started to do some research and found out she had unknowingly signed her own divorce papers, agreeing to the divorce and renouncing all her financial rights, while she thought she was helping her family with financial troubles. She was raised in the Netherlands and cannot read Arabic. Furthermore she claims to have been signing blank papers at the first office.

Later she found out her husband had brought another woman to the court to gain permission for the divorce, pretending to be Jamila and using Jamila's identity card. She tried to confront the lawyer who had handled the court case, as well as finding sponsored legal aid to undo the signing of the papers in which she agreed to renounce spousal maintenance during the *'idda* and the *mut'a*, but it was too late to be able to change anything. By arranging the entire divorce behind her back and using deception, her former husband had effectively excluded Jamila from the divorce procedure, which would probably have gone rather different had she been able to represent herself or find her own lawyer. For other respondents, whether they took the initiative for the divorce or not, their involvement in the legal procedure generally started by finding a lawyer to represent them in the divorce procedure.

4.5.2 Finding a lawyer

Generally, the first step in the legal procedure is to find a lawyer. The majority of the respondents in this study – 15 out of the 22 respondents who had already gone through a divorce procedure – had taken the initiative to start the divorce procedure themselves.[16] This did not necessarily mean they had taken the initiative in ending the marriage as well. All but one of the respondents who had unexpectedly been abandoned by their spouse, for example, were still the ones taking the initiative in starting a divorce procedure. Even in cases where the other spouse had initiated the divorce and the procedure had already begun, finding a lawyer was often still an issue. In some cases, the couple agreed on the divorce. In the Netherlands, in such situations, it can save time and costs if the couple shares a lawyer and files for divorce together. In this study only two out of 14 couples divorcing in the Netherlands used this option, which is much lower than the Dutch average of 60% communal divorce requests (Wobma & De Graaf 2009, p. 18).[17] In Egypt, men can simply register a divorce, without need for a court procedure or layer.[18] Therefore, mixed couples also do not need a lawyer to divorce if they divorce at the initiative of the husband or if both agree. They can go to an office at the Ministry of Justice – where marriages are also contracted – bring two witnesses and divorce on the spot:

16 This might be related to the majority of interviewees being women. In the Netherlands, women tend to report more often to have taken the initiative for the divorce. With regard to the legal procedure, 60% of divorces is at a communal request of both partners, 30% at the request of the wife and only 10% at the request of the husband (Wobma & De Graaf 2009, p. 18). Statistics for Morocco suggest that it is also mostly women who take the initiative for a divorce procedure. According to the LDDF annual rapport over 2006, there were 28,239 divorce cases in Morocco, of which at least 20,223 were instituted by women (only the amount of women for *chiqaq* divorce is mentioned, while *talaq* against compensation cases may also have been initiated by women) (Ligue Democratique des Droits des Femmes 2007, p. 5). Unfortunately I could not find similar statistics for Egypt.

17 Interestingly, the Dutch lawyers of Moroccan origin I interviewed also mentioned doing mostly or even almost exclusively one-sided divorce cases.

18 As for marriage, mixed couples can only register at a specific office at the Ministry of Justice. For a more elaborate discussion see (Kulk 2013).

> R: You can get married very easily here. You get married in half a day, and you can get divorced in half a day. It's remarkable that, when we got to the office to get divorced, with the official marriage certificate, within 15 minutes all the marriage [sic] certificates were on the table. While it hasn't been computerised yet, everything with books. You sign and you're divorced. That was because he did not contest the divorce. If he had not wanted to divorce I would have needed to make a court case out of it. That would have been different. But because we both wanted to divorce, it wasn't a problem. And so, we also did not need to discuss maintenance rights or custody, we just arranged those things among ourselves.
> I: Did you put something down in paper?
> R: I once wrote something down, and he signed it, but we never had it put down by a notary. But it has been ten years now. And experience shows that you can talk to him. Of course I'm sometimes terribly annoyed by him. By his lethargic attitude. But well, there is a reason why I divorced that man. (Janneke, Dutch woman divorced from Egyptian husband, living in Egypt).

Janneke was impressed by how easy it was to divorce and how well-organised the office at the Ministry of Justice was. The divorce took place completely out of court, with no further involvement of legal professionals. Two out of three respondents who were formally divorced in Egypt used this option. The other had to start a court case, as her husband – represented by his family due to illness – refused to cooperate in the divorce.

However, when being the first to choose a lawyer to start the divorce procedure, a decision is also made about where – in which country – the procedure will take place, as most lawyers only work in one country. If one of the spouses has already started a legal procedure in one country, there are generally less options for the other partner to choose where the divorce should take place. In this study, almost all respondents who initiated their divorce chose a lawyer in the country they lived in at that moment. The two respondents who chose a lawyer in the country of residence of their former spouses happened to be the same two who had waited for a very long time before starting the divorce procedure. The Dutch-Moroccan Naima did so because she did not register her marriage in the Netherlands, and thus had no reason to divorce there. She wanted a Moroccan divorce in order to be able to visit her family with her child. Karin, a Dutch woman, did visit a Dutch lawyer once. There she found out that it would be a very expensive affair, as she did not qualify for government-sponsored legal aid, and she decided to wait until she would be able to travel to Egypt to arrange her divorce over there, which she did only after having moved to Egypt herself.

Interestingly, and contrary to my expectations before starting this study, there seems to be little evidence of so-called forum shopping, in the sense that spouses strategically choose where to arrange their divorce case, influencing which law will be applied to their case, and choosing the location which would benefit their specific situation most. However, it could be argued that taking into account a difference in costs could also be seen as a kind of forum shopping. Even though forum shopping could in some cases have influenced the results with regard to, for example, financial issues such as maintenance, none of the respondents in this study made use of this

tactic. Moreover, only in a few Dutch divorce cases the possibility of applying Moroccan or Egyptian family law was an issue. I will return to this in the chapters 6 on child care after divorce and 7 on financial aspects of divorce.

Respondents had different strategies for finding a lawyer. Some respondents randomly picked a local lawyer they did not know beforehand, or – in the Netherlands – were referred to a lawyer by an office for government-sponsored aid. Others made a more deliberate choice for a certain lawyer, for example someone they knew, or who had been recommended to them by colleagues or friends:

> R [...] he is also the lawyer of my employer. So he also works for my boss and other European people I know. So yes, of course you're not sure if you can trust someone, but exactly because these colleagues of mine have also done business with this man I made a conscious choice. Like, OK, people know him and they can tell me whether he does his work well. (Anna, Dutch woman in divorce procedure from Egyptian husband, living in Egypt)

Anna was not just looking for a good lawyer, but also someone she *as a European living in Egypt* could trust, and with whom other *Europeans* had good experiences. She is referring to an existing frame of wariness for Egyptian businesses and service providers in tourist areas overcharging foreigners for inferior or even absent services.[19] Thus, in this quote two distinctions are made, first between good and bad lawyers, and second between good lawyers who are also trustworthy for foreigners, and lawyers who may be good when working with Egyptian clients but who cannot be trusted when working for a European client. Other Dutch or Dutch-Moroccan respondents have also mentioned fears of untrustworthy Egyptian and Moroccan lawyers overcharging 'rich' European clients. I will return to this issue below.

Some respondents chose a lawyer because of his or her specific specialisation or abilities. They did not contact a local lawyer but went looking for someone with expertise in transnational divorce:

> I searched the internet. And came into contact with a Moroccan lawyer in [city]. That was Mrs. [name]. I made an appointment with her, and took all the paperwork from the marriage and discussed it with her. She said: based on all this we can start the divorce. (Inge, Dutch woman divorce from Moroccan husband, no communal residence)

Most of these specialised Dutch lawyers were of Moroccan origin living and working in the Netherlands. As will further be discussed in chapter 8, there is a network of NGOs and lawyers specialised in transnational Dutch-Moroccan divorces. These lawyers have experience in handling the specific complexities of transnational, especially Dutch-Moroccan, cases. They can advise in which country it is best to start the divorce, and if necessary, they can assist in the recognition process in Morocco.

19 This is a common practice in certain parts of Egypt, as well as in other tourist destinations all over the world.

Taking decisions in a divorce procedure, and especially a transnational divorce case, requires specialised knowledge. Most respondents relied heavily on their lawyer, having only limited knowledge and understanding of their own legal procedure. Looking back on the procedure, some respondents felt that their lawyer did not represent their interests well.

> R: So in our city [city in Morocco], I went to a lawyer. I explained my problem to him and asked whether he could do something for me. And he said to me like: 'well, paperwork, and this, and that, and that much cash he would need'. But right away I had the feeling: I am standing here as a woman, well, as a girl, I was still a young girl then. As a young girl I'm on my own here. He does not take me seriously. He just thinks: here I can fleece someone nicely. He just didn't take me seriously. Well, then he spent four years, until 2004, having mutual court cases. Twice there was a judgment that I should return to my husband. The third time I cancelled the court case myself, because I realised that this lawyer was just, well, just a waste of money. [...]. That man was only working to gain his money. Every time he was bugging me like: 'that much money, I need this money.' (Naima, Dutch-Moroccan woman divorced from Moroccan husband, no communal residence)

> R: My lawyer, the first one, made a mistake. She did not send the bank statements. Whether it was on purpose or not was another story. But [new lawyer] thought it was very strange that the [old] lawyer did not do so. I have a feeling he [former husband] has been in contact with her. Because he said: 'your lawyer, she at least is sensible. More sensible than you are.' What does that mean? I asked her [old lawyer]: is my husband in contact with you? She said: 'no, that's not allowed'. OK, it's not allowed, I know. But what's the truth. I think she has [been in contact with former husband]. And that's not fair. (Malika, Moroccan woman divorced from Dutch husband, living in the Netherlands)

In these cases, respondents felt their lawyers broke the trust that they put in them. They suspected that their lawyers were not doing their work well because of the money involved or even because they were in league with their former spouse. In Naima's case, it was explicitly connected to her position as a young woman living in the Netherlands who did not have the support of her Moroccan family. Naima and Malika both went on to find a new lawyer, blaming their old lawyers for failing to represent their interests, but keeping faith that a judge would rule in their favour if only their case was presented right. Other respondents who lost cases blamed the legal system as a whole. These differences hint at different perspectives on legality, which will be discussed further below.

4.5.3 The legal procedure

Thus, finding a lawyer is almost always the start of the legal procedure. For part of the respondents, especially in the Netherlands, this is also where their involvement ends. Their lawyer is the only point of contact between them and the legal system. They submit all the necessary paperwork but they never see a court or a judge, every-

thing is handled by their lawyer, sometimes in person, sometimes the whole process takes place on paper:

> I just hired a lawyer who did it. He had a letter of attorney. And he did everything. I never arranged anything; he just arranged everything for me. (Conny, Dutch woman divorced from Egyptian husband, living in Egypt)

Even when at some point in the procedure they had to appear in court, most respondents left choices in the procedure to their lawyer, who was also their main source of legal information. Some were not even aware of the kind of divorce they had applied for.[20] Only in three cases, respondents took the lead in their divorce procedures themselves, having reasons for requesting specific procedures and (fault-based) divorce forms. Leila, a Moroccan woman, for example, requested a fault-based divorce in her Moroccan divorce procedure on the grounds of absence and non-maintenance, when she could more easily have asked for a no-fault *chiqaq* divorce with the same effects. However, she felt wronged by her Dutch-Moroccan husband who kept her waiting for four years, failing to provide residence in the Netherlands and thus preventing them from starting their married life together.

In about half of the cases, the respondents had to appear in court at some moment in their procedure. However, this was mostly just a formal step in the procedure, for example when spouses had to declare they really wanted a divorce and that reconciliation was not possible. Their performance in court was thus not relevant for the outcome of the procedure.

In a few cases, the spouses used the court to solve conflicts resulting from their divorce. In these cases, the divorce case was intertwined with court cases over maintenance, the division of property or child custody and sometimes also the residence of the children. Two Moroccan spouses and one Egyptian spouse who had gone through or were going through court cases for divorce referred explicitly to their position as migrants in a Dutch court case. Farid, a Moroccan man, for example, was involved in a long and bitter series of court cases involving domestic violence, divorce, the right to contact with his child and, subsequently, as he had a dependent residence permit, his rights to residence in the Netherlands. As his rights to child contact were suspended, he also lost his rights to stay in the Netherlands, which were based on his visitation arrangements with his son. According to Farid, his being Moroccan influenced the judge's decision: 'sometimes judges go deep, sometimes not. When he [a judge] reads at the top of the file "Morocco? Clear out!"' (Farid, Moroccan man divorced from Dutch wife, living in Morocco). Mailka, a Moroccan woman also remembers trying to get Dutch people to testify her story, as they would have more chance of being believed than Moroccan testimonies. Latif, an Egyptian man

20 As has been discussed in chapter 3, there are multiple forms of divorce possible in Egypt and, especially, Morocco, each with its own procedure and consequences. In the Netherlands, were there is only one ground for divorce, there are also procedural differences between a communal request for divorce or two opposing spouses which each their own lawyer.

who had considered a court case on child custody after his relationship with a Dutch woman, had the same impression:

> R: The Netherlands is a mothers country. All rights over children are for mothers. I'm just a foreigner, it's her [ex-wife] own country. I checked the internet, the *Dwaze Vaders* website.[21] If a Dutch man has no rights, I certainly don't. (Latif, Egyptian man separated from Dutch partner, living in the Netherlands).

In this quote, Latif refers to his position in two intersecting discourses of inequality. First of all, he feels that, in the Netherlands, he would have few rights as a man and father. He explicitly refers to having read the website of a fathers' rights organisation. Secondly, a reference is made to his position as a migrant. He has the impression that, as an Egyptian father, he would have even less chance of winning a court case over his children than a Dutch father would. Informed by his legal consciousness of Dutch law, he did not consider a (Dutch) court to be able to help with his child custody issues. However, he did not present himself as powerless in the rest of the interview. Instead of going to court, he used extra-legal ways to increase his power position when negotiating with his ex-wife over their children, and they reached an agreement which he considered favourable.

4.5.4 The second divorce: divorcing in two countries?

Thus, when choosing a lawyer and starting a divorce procedure in one of the two countries, almost all initiating spouses chose to arrange their divorce in the country they were living in. However, this divorce is not automatically known in the other country. Thus, spouses who had registered their marriage in both countries can be divorced in one country but remain legally married in the other, a so-called limping marriage. If one wants to make sure the marital status is the same in both legal systems, the first divorce needs to be recognised in the second country, or sometimes a full second divorce procedure is needed, as has been discussed in chapter 3. The issue of getting a marriage and subsequent divorce recognised in both countries is much debated, both in legal literature (e.g.: Kruiniger 2008; Jordens-Cotran 2007; Rutten 1988, 1999) as well as by NGOs and other organisations. In this study, however, only about half of the participants had registered their marriage in the other country after it took place.[22] Participants had different reasons for registering or not registering their marriage in the other country. First of all, informal *'urfi* marriages cannot be

21 *Dwaze vaders* or 'foolish fathers', a Dutch fathers' rights NGO established in the 1980s. The name seems to refer to the mothers of the Plaza de Mayo, this organisation is called the *dwaze moeders* or 'foolish mothers' in Dutch.

22 For Dutch residents it is obligatory to register a foreign marriage, with the exception of Egyptian *'urfi* marriages which are not valid in the Netherlands. Although there is only a small chance of discovery if someone fails to do so, the consequences, for example with regard to the paternity of children, can be severe. For the legal complexities of this issue see: Kulk 2013.

registered in the Netherlands. Often the most important reason to register had to do with (return) migration plans, for example:

> Because I had the idea that we would probably live in the Netherlands. That's why I registered it in the Netherlands. But the marriage is just valid, right, the Egyptian marriage is valid. It's actually not necessary. (Conny, Dutch woman divorced from Egyptian husband, living in Egypt)

Conny rightly claims that, in her case, it was not obligatory but optional to register her marriage in the Netherlands, as she was not living there. In most cases the couple married in Morocco or Egypt and then, if they planned to migrate, started the immigration procedure to the Netherlands. The registration of the marriage then took place as one of the steps in that procedure. None of the three couples that married in the Netherlands – all of them mixed marriages – had their marriage recognised in Morocco or Egypt. Similarly, interviewees that married in Egypt or Morocco and who did not intend to live in the Netherlands generally chose not to register their marriage there:

> I: Did you legalise the marriage in the Netherlands?
> R: No. You know, it wasn't an option to live in the Netherlands. I'm not interested in the passport for living in the Netherlands at all [laughs]. No, for us it was no option at all. Moreover, I was glad I did not do so. Because with the divorce. I mean, then you have to go to the Netherlands, and this, and that. [...] And I was thinking like: why should I? I'm married *here* [in Egypt] am I not? (Janneke, Dutch woman divorced from Egyptian husband, living in Egypt)

To a question about registration of her Egyptian marriage in the Netherlands, Janneke automatically responds that she would not want to live there, implying that this would be the only reason for her. This absence of interest of this and other interviewees to register their marriage abroad if they did not aim to live there is remarkable compared to research done by Kulk (Kulk 2013) who describes how his respondents had both legal as well as practical reasons for registering the marriage in the second country.

Like Janneke mentioned, if a couple did not – voluntarily – register their marriage in the other country, generally this also meant there was no need for the recognition of the subsequent divorce. Moreover, of the respondents who registered their marriage in both countries, only a minority had already arranged for the recognition of their divorce at the moment of the interview, although some intended to do so in the future. Again, decisions to arrange for the recognition of the divorce were taken based on their ongoing connection to the other country.

> I: When you got divorced, did you ever consider arranging the divorce in Egypt?
> R: No... No no. Could be that over there I'm still his wife. Could very well be. But I never return to Egypt so...

I: Did you ever visit Egypt since then?
R: No. (Sofia, Egyptian woman divorced from Egyptian husband, living in the Netherlands)

Due to her husband's refusal to finance a plane ticket to Egypt Sofia never managed to visit Egypt during the marriage.[23] After the divorce she was living on social security and could no longer afford to go. At the time of the interview, she was already in her seventies, and due to health problems she was no longer able to travel. Although Sofia was born and raised in Egypt, she claims never to have had Egyptian nationality.[24] After her move to the Netherlands, she thus no longer had any formal connections to the Egyptian state; and she had never felt the need to register her divorce.

It was mostly the foreign partner who had arranged for the recognition of the divorce in the other country, especially if he/she had returned to live there after the divorce. This echoes what Kulk (Kulk 2013) has written about the legal division of tasks in transnational marriages, each spouse being responsible for the legal paperwork of his or her 'own' country. A lack of contact after a divorce meant that in some cases the respondents I interviewed did not know whether their former spouse had actually succeeded in arranging for the recognition of their divorce.

I: Did you ever try having the divorce acknowledged or registered in Egypt?
R: No. In principle all that doesn't interest me at all.
I: Do you know whether your ex-wife tried?
R: I suppose she'll have done that, but I wouldn't know how she should have done that, and how such things should go. In principle I believe divorces are acknowledged, right? [...] I wasn't planning on going to Egypt anyway. But I also don't believe it would be a problem if I would, as long as she doesn't know. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

Like this Dutch man, in the absence of – plans for – return migration or re-marrying a new spouse from the other country, many respondents from both migration or mixed marriages simply did not see the need to arrange for the recognition of their divorce. Rabia, a Moroccan woman explained why she did not see the relevance of getting her divorce acknowledged in Morocco:

R: Because I could arrange my situation here. Because here is my life and home. So afterwards I didn't really do anything. Back then some women told that they actually had problems with customs when entering Morocco etcetera. But I was here [in the Netherlands]. Because of the debts, I could not go back for six years.
I: You did not have the money then?

23 This will be discussed further in chapter 5, on power relations during the marriage.
24 As has been explained in the introduction, I have categorised the interviewees on the basis of the country where they had been born, in addition to categorising so-called second-generation migrants as 'Dutch-Moroccan'. Sofia's family was originally from Europe but had already been living in Egypt for several generations before she was born. Therefore, I have qualified her as Egyptian, even though she would not necessarily agree with this category.

> R6: I didn't have the money, and the children were small. They demand so much. So I really had to repay the debts first. After six years I could go to Morocco for the first time. [...] Actually I did not really need the acknowledgement. I will not marry again. Not with six children, certainly not. That's impossible. My life was over actually. That's why I didn't take those steps. Well, I've got my divorce here, and I take it [the divorce papers] with me every time. But, knowing him, he didn't do anything about me. Because he knows he is wrong. That he should have paid [child] maintenance to me. Expensive. In the eyes of the judge I'm divorced from him. So, that's why I didn't take steps in Morocco. Because I did not have the time to go there all the time. I didn't have the money to go there all the time. I didn't have the money to send to the lawyer all the time. I used the money to do something for my children. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

Although Rabia had heard the rumours about the consequences of not having a Dutch divorce recognised in Morocco, she chose to avoid the hassle and costs of going through the recognition procedure. Moreover, she felt that her former husband would not hassle her, as she would probably benefit financially if she pressed the divorce and claimed child maintenance. She invokes a moral discourse here. Both the former husband and the judge would consider him to be in the wrong, for leaving his children without paying maintenance. She trusts that the court would take the right action. For this respondent remarriage would be the only reason to arrange for recognition, but this was something she considered impossible. Her argumentation also contains elements of belonging, the Netherlands being the place where she lives.

Other participants did believe that their still-existing marriage in the other country could have certain consequences for them:

> I intentionally did not visit Morocco, on the advice of my [Moroccan-Dutch] friend. She told me I could be arrested at the border. If he started those [proceedings]. Then they arrest you the moment they enter you into their computer. After which you can go to prison. Because I was still married in Morocco but divorced in the Netherlands. Also, a few months ago, she [the friend] scanned and emailed the official divorce papers for me. So he can, in Morocco [register the divorce]. If he did so, I don't know. But he retrieved the divorce papers from me. I did not ask him: are you going to marry again, or are you registering it? Because that wasn't even important to me. So I can't visit Morocco again. That's out of the question at the moment. But if I would want to go to Morocco, I could ask my friend to check whether the divorce has indeed been registered. But now I avoid Morocco. (Inge, Dutch woman divorced from Moroccan husband, no communal residence)

> It is important that the Egyptian divorce is taken care of. Otherwise he could even re-register our marriage in the Netherlands, and then I could start over again.[25] He has a Dutch passport. [...] He could also use sharia to arrange an entry ban for all Islamic countries, including Indonesia. (Manon, Dutch woman divorced from Egyptian husband, living in the Netherlands)

25 This is not legally possible.

These women were afraid their former husband could have them arrested in Morocco, register the marriage in the Netherlands again, or even through 'Sharia' limit their former wife's movement in all Islamic countries. For Manon, these fears were a reason to intend arranging her Egyptian divorce in the near future, whereas Inge now avoided Morocco, although she did migrate to another Muslim-majority country. As such, Moroccan men do not have the right to limit their wife's movement, nor is it possible for an Egyptian man to prohibit his (former) wife from entering all other Muslim-majority states.[26] Also, it is no crime to divorce in another country. However, both women could get into trouble visiting Egypt or Morocco after remarriage, which would make them bigamists. Their perception of their (former) husbands power under Islamic family law is probably inspired by negative discourses on Islamic family law, which both grant enormous but vague powers, but in a gendered way, positioning men as powerful and women as powerless in these legal systems.

The procedure to arrange the recognition of the divorce in the other country is often represented as complicated and expensive. This provided a barrier for many respondents who did not have a pressing reason, such as migration, to do so, as can also be seen in the stories quoted above. In Dutch-Moroccan cases, legal aid in this process has developed into a market with small businesses specialising in arranging recognition of Dutch divorces in Morocco, as will be further discussed in chapter 8 (see also: Sportel 2011). In this study, only two respondents, one Dutch woman and one Moroccan man, had tried to arrange for the recognition of their divorce themselves, both in their own country of origin. Both succeeded more or less with ease, having sufficient cultural and social capital to arrange all the necessary paperwork (for a more elaborate discussion see: Sportel 2011). In one case, Farid, a Moroccan man who had been deported from the Netherlands after his divorce from a Dutch woman had the recognition of his Dutch divorce recognised by a Moroccan court. His brother, a lawyer, arranged this for him. In the other case, a Dutch woman living in Egypt chose also to register her divorce in the Netherlands, as her Egyptian husband intended to migrate.[27]

> We have also registered it in the Netherlands. Then it was very difficult to get those papers through in the Netherlands. The divorce papers. All those translations, and then that there was no possibility of appeal, and I don't know what. We had to arrange a lot of paperwork, and in the end we succeeded. [...] Because it took a long time. That's because of the central register in The Hague, that's also where our marriage was registered, there you need to have a so-called annotation made.[28] (Conny, Dutch woman divorced from Egyptian husband, living in Egypt)

26 As will be discussed in chapter 7, husbands can file claims at Moroccan or Egyptian courts to have their wives return to the marital home. However, the only possible sanction is the loss of maintenance rights.

27 At the so-called *bureau landelijke taken* in the Hague. This registration of divorce is not obligatory if someone is residing outside of the Netherlands. See also http://overheidsloket.overheid.nl/index.php?p=product&product_id=553, accessed on 28 February, 2012.

28 *Kanttekening* in Dutch, noting that the marriage has been dissolved by divorce.

Although this Dutch procedure is about as complicated as the Moroccan procedure with regard to paperwork, it takes place outside of the courts. A lawyer is thus not involved, a couple can arrange the necessary paperwork themselves, if they have sufficient cultural and social capital to manage the procedure. However, this also means that they miss the legal information and procedural assistance a lawyer can provide and are dependent on information from other sources, such as the embassy or perhaps the commercial aid available in Dutch-Moroccan cases.[29]

Above I have described how spouses from transnational marriages have arranged their marriage, the reasons for ending their marriage and the steps taken in the divorce procedures. Decisions made and stories told were sometimes informed by certain images and notions about the legal systems. Below I will further discuss these images, using the concept of legal consciousness and how they impacted the choices spouses have made in the transnational divorce process.

4.6 Legal consciousness

In the preceding paragraphs I have outlined some of the choices transnational couples have to make during the divorce, such as how, when and where to arrange the divorce. In these choices, images of the law sometimes played a role. In this section I will analyse how these images of the law can be related to both earlier experiences with the law as well as negative discourses on Islamic family law and mixed marriages, using the concept of legal consciousness.

First of all, legal consciousness is not static but develops and changes in contacts with the legal system (Hernández 2010; Merry 1986). Some respondents described how being in a transnational marriage and subsequent divorce changed their perception of the legal system. In her story, Eva, a Dutch woman, tells of how she gained legal knowledge and understanding during the Dutch divorce process:

R: It's weird. I didn't know all that. You get divorced, and the date of the divorce is November three, or something. While we were standing there [at the court] in October. But you're not divorced until the day that it has been entered in the books [civil registry], you know. But those are legal things. [...] I would notice like, oh, that's the way it works. In that sense we both had the idea that this was a new part of the voyage of discovery [...] (Eva, Dutch woman divorced from Moroccan husband, living in the Netherlands)

Eva describes this changing process as a 'voyage of discovery' which had already begun at the moment of their mixed marriage. Gradually she learned to handle the Dutch legal system and, especially, those parts specific for transnational couples. In this process, she also lost some of her trust in the law:

29 Even though I have not found any private offices explicitly offering this service, they can help with other Dutch procedures, so I suspect paid aid should be available if spouses cannot manage themselves.

> R: I was a bit in that scene, where you notice that the law in the Netherlands isn't as law abiding as you would want to rely on. And it's exactly the same in Morocco, where we also have received fines for things we did not do, with the aim of extracting money from me. But I think many Dutch think that in the Netherlands you'll always be treated well. And I saw from working with *allochtonen* a lot that this isn't always the case. (Eva)

Through her own experience, as well as those of others in her network connected to migrants in the Netherlands, Eva's trust in the legal systems of both Morocco and the Netherlands was lessened. Especially Dutch law lost some of its lustre as to ensuring that 'you always get treated well' in the Netherlands. De Hart, in her dissertation on mixed relationships and migration law in the Netherlands, also describes how, through their confrontation with migration law, the Dutch partners in mixed relationships had an 'unexpected meeting' with the Dutch state (De Hart 2003, p. 2-3).

Negative experiences in earlier court cases, before the divorce, had made some respondents turn away disappointed from the legal system altogether. One Moroccan man for example, told a negative and suspicious story about the Dutch legal system. At the moment of the interview, he was involved in prolonged court cases against the Dutch state for residence and social security after being expelled from the Netherlands:

> I want to live like everybody else. I already feel Dutch. I don't need any papers for that, it's in my head. In the Netherlands I have no rights, no human rights, nothing. (Amar, Moroccan man abandoned by Dutch wife, living in Morocco)

In his story, Amar had somehow lost his residence in the Netherlands. When he was living in the Netherlands, he had applied for Dutch nationality but could not pick the passport up because of a holiday. Afterwards he had to apply again, but failed. After he fell ill, having both physical and mental complaints, he lost his job. Afterwards he lived for some time on Dutch social security but after a while his disability pension was withdrawn. Then he was expelled from the Netherlands. His Dutch wife followed him to Morocco. Once living there, three children were born, and it turned out that they could not get child benefits or Dutch passports, despite their mother being Dutch.[30] One by one, Amar had lost all rights he felt he and his children were entitled to.[31] He felt wronged by the Dutch state and legal system. At the moment of the interview, his court case against the Dutch state for social security had already been running for five years. Amar was sure that this long duration was because 'they know he will win'. These experiences informed his negative and distrusting legal conscious-

30 As both parents were officially living in Morocco, they were not entitled to Dutch child benefits. See: http://www.rijksoverheid.nl/onderwerpen/kinderbijslag/kinderbijslag-in-het-buitenland, accessed on 28 February 2013. From his story, I cannot understand why the children would not have been eligible for Dutch nationality.

31 Amar did not really understand why he was expelled from the Netherlands. From his story I also cannot be sure what happened exactly and why he lost his residence. If he would have acquired Dutch nationality he could not simply have lost it by failing to pick up a passport.

ness of the Dutch legal system. Even though he still feels Dutch, he no longer has the possibility to enter the country or access his 'rights'. By using the term human rights and, later in the interview, describing his career in Dutch healthcare, care for the elderly and child care, he also uses a moral discourse of rights. He felt he was getting small thanks for his services to Dutch society. At the moment of the interview, he had not yet started a divorce procedure after his wife had left him with their children to return to the Netherlands. He still had some hope that she would come back, and he felt it was legally impossible to start a divorce procedure until she would return to Morocco. Since his wife left, his condition had worsened, leaving him helpless to change the situation and dependent on his family for both financial aid and child care.

In these and similar stories of respondents, multiple and unrelated court cases and other legal experiences sometimes became one coherent story about Dutch, Egyptian or Moroccan law, linking residence/migration law, social security law and family law. During their experiences and procedures, they had lost their trust in what Merry, in her research on the legal consciousness of working class Americans has called: 'the ideology of formal justice', in which individuals see themselves as having a 'broad set of legal rights, loosely defined, which shade into moral rights', and which are taken seriously by the state (Merry 1986, p. 257). In Merry's research, people discover through their experience with the courts that this ideology is not always correct, and that the daily practice of the court is far messier. 'Justice' is not automatic but depends on the circumstances and characteristics of the parties in the conflict. What Merry calls 'situational justice' is an acquired, and often more realistic perspective. In situational justice, the outcome of a court case also depends on who you are, for example being part of a mixed marriage with a migrant (Merry 1986, p. 258-259). This changing of perspectives does not necessarily mean that the Americans in Merry's research abandoned the court:

> Although the people who bring their problems to court express anger and frustration with the court, they do not conclude that the court is illegitimate but that the court considers them and their problems unworthy of help. The experience is a challenge less to the legitimacy of the legal system than to their sense of entitlement. (Merry 1990, p. 135)

This shift from an ideology of formal justice to a perspective of situational justice can also be seen in how the legal consciousness of the informants discussed above has changed through their experiences in a transnational marriage and divorce, their 'voyage of discovery'. This is contrary to the process which Hernández (2010) describes for disadvantaged women in a poor US neighbourhood, who start from having very little trust in the law and, after contacts with the legal system and sponsored legal aid, they gradually developed a more positive image of the law and a sense of legal entitlement. I expect that social class and the specific context might explain some of the differences between my results and Hernández's study, as my research did not include interviewees from such a thoroughly disadvantaged position, and thus they had not shared the experiences of violence in the streets, little police interference

and criminal law which informed the initial legal consciousness of Hernández's respondents. De Groot-van Leeuwen also remarks that, in the Netherlands, education is an important but often neglected factor in explaining trust in the legal system (De Groot-van Leeuwen 2005: p. 29-33)

This shift in legal consciousness does not necessarily take place for both legal systems, nor does it work for all respondents in the same way. One Dutch woman, Karin, whose story has already been partly discussed above, had far more trust in the Egyptian legal system than in the Dutch system. Throughout the interview, she illustrated her point of view with stories about the differences between the two countries ranging from telephone lines and electricity bills to her fears that Dutch social workers would take away her children after divorce, or at least monitor her closely for being a single mother divorced from a foreign father. In her story, the Netherlands was characterised by bureaucracy and complicated procedures; whereas in Egypt services offered were better, more reliable and procedures more efficient (Karin, Dutch woman divorced from Egyptian husband, living in Egypt).

Nora, a Moroccan woman divorced from a Moroccan man and living in Morocco at the time of the interview, also used opposite perspectives for the two legal systems she came into contact with. After losing custody over her child in a Moroccan divorce case – in which she suspected her former husband to have won through bribes and corruption – she hoped that the case would be settled in the Netherlands. Her mother, who was present during the interview, was severely disappointed in the Moroccan legal system: 'There is no law in our country, just money. (…) In Europe, law is law, not in Morocco, even though we have Islam'. This mother and daughter had lost the trust implied in the ideology of formal justice for Morocco, but not for the Netherlands.[32]

In other interviews, the differences in legal consciousness of the legal systems in the two countries were more subtle. For example, Monique, the Dutch woman who refused to get married in Egypt because of her fear of losing all her rights in the Egyptian legal system, started a criminal court case to force her former fiancée to return the money he owned her.

> I: What do you expect that this whole court case will bring?
> R: I hope everything. I don't know. […] I hope at least 200,000. I've got papers for at least 200,000 pounds. So that's 30,000 euros. And the Western Union money, and the money he took from my bank card. Yes, that's about 40,000 euros. Well I think, we have so much proof. […] I mean, here [in the Netherlands] the case would have been abundantly clear. But then, Egypt is Egypt. He always said, I've got contacts in [city]. I say: that doesn't mean a thing, with regard to this I've got more contacts than he does. (Monique, Dutch woman separated from Egyptian partner, living in Egypt)

32 I have not spoken to this interviewee since the interview in Morocco. However, indirectly I have heard that, after several years and multiple procedures, this woman indeed was able to return to the Netherlands and regain custody over her child.

When describing her motivations not to get married in Egypt, as quoted earlier in this chapter, Monique described Egyptian law as something to be feared and avoided, as it leaves European women without any rights. However, in this quote, this negative discourse is remarkably absent. Instead, she shows signs of a situational legal consciousness, in which proof and presentation of facts is important and justice is not automatic. Although her trust in the outcome of the case would have been greater in a Dutch court than in an Egyptian court, she still trusts in winning the case. Although she does refer to Egyptian courts being open to corruption, she also hints at a certain competence in handling those aspects too, having more local contacts than her former fiancée.

In the interviews, stories of distrust were thus regularly connected to negative experiences and stories about corruption of lawyers and courts, chaotic bureaucracy, discrimination and messy procedures. This demonstrates how legal consciousness is not only informed by experience with the courts in the field of family law but also by other experiences with the 'people of the law' and the legal system. Moreover, the powerful negative discourses about Islamic law also played a role. As has been described earlier in this chapter, women feared that their former husbands had immense power under Islamic law to harm them. However, these negative discourses on Islamic family law were much more present in the stories about marriage contracts than in the stories about divorce. While legal consciousness clearly informed some of the choices interviewees have made when getting married, including where to get married, it never actually determined or even influenced their choices on where, in which legal system, to arrange the divorce. For example, even though Karin had a very negative image of Dutch law, this negative image did not determine her choices with regard to where to arrange the divorce, instead she based her choice on the costs of the divorce procedure. Nevertheless, Karin's negative image of the Netherlands and the Dutch legal system eventually were one of the reasons to leave the country forever and migrate to Egypt after her divorce. Similarly, when Dutch Monique spoke about her marriage to her Egyptian fiancée, she kept referring to her fear of Egyptian law and her intention to avoid any contact with the Egyptian legal system. However, when at the end of her relationship her former fiancée took a lot of money from her bank account and refused to return the money she lent him, she turned to the Egyptian court for a claim. I will return to the influence of legal consciousness on decisions in the divorce procedure in subsequent chapters about child care after divorce and the financial aspects of divorce.

4.7 Conclusion

In this chapter I have analysed the divorce narratives of spouses from transnational marriages, starting at the moment of marriage. In accounting for the end of their marriage, there was a difference in spouses who used explanatory frames of cultural difference and others who blamed their former partners more individually. For mixed marriages, the frame of *Bezness* is exceptionally strong, causing the entire marriage to

be reinterpreted in hindsight and the partners to be recasted as perpetrator and victim. Especially this frame had an impact on the divorce procedure, as women who felt themselves to be victims of *Bezness* did not only start a divorce procedure, but they also (tried to) involve the police, hoping to mobilise the authorities to punish their former husband as a perpetrator.

During the transnational marriage and divorce process, couples are faced with many choices and decisions. Some couples in this study made a lot of effort to arrange the legal aspects of their marriage, making marital agreements in a communal language or including conditions, seeking advice from specialised lawyers in their divorce procedure. Most made such decisions as they went along, getting married in a hotel lobby to be able to share a room, or randomly choosing a local lawyer to handle their divorce. The law played little part in their choices as they navigated between practical and financial concerns, similar to what Kulk (2013) described for transnational couples with children. In this study on divorce, most couples only registered their marriage in the other country when it was necessary for the migration procedure and some only started a formal divorce procedure when there was a practical, immediate cause to do so. The presence of transnational ties also played a role in these decisions. In the absence of ongoing relationships with the other country, respondents simply had no cause to go through the trouble of a second divorce. Specific laws in one of the two legal systems were never actually mentioned as a reason for choices in the divorce procedure. Knowledge, images and perceptions of the law – legal consciousness – thus were often not as relevant for the choice of legal system as might be expected. However, legal consciousness was important in the stories they told and, as we will see in later chapters, for some of the decisions taken in arranging child care and financial matters after divorce.

In the context of mixed marriages, negative stories and images of Islamic family law are present. Especially in the stories of Dutch interviewees married more recently to an Egyptian or Moroccan husband, Moroccan or Egyptian law is presented as both very powerful and completely gendered and ethnicity-based, providing Egyptian or Moroccan men with certain, unspecified, rights while taking away rights from Dutch women. Dutch law is either remarkably absent these fearful stories or presented as a safe refuge, which does not encourage further investigation of the actual law in the Netherlands. These stories share a perception of the law as being all-powerful and consistently enforced by the state similar to the ideology of formal justice, as described by Merry, which is promoted by the state and the legal systems themselves.

Another category of stories, often informed by personal experience, informed a second perspective on the law and legal systems. During their transnational marriage, respondents came into contact with corruption, bureaucracy, discrimination and Dutch migration law. These sometimes seemingly unrelated contacts with the legal systems could be presented as one coherent story about law and the legal system, both in their 'own' as well as in the country of their former spouse, though not necessarily in the same way. In these stories the law loses some of its lustre as being an all-powerful – either positive or negative – power, its power gaining more personal

dimensions, and touching some more than others. These stories could be classified as what Merry calls a legal consciousness of situational justice. Thus, in a transnational context, legal consciousness can be different for each legal system spouses come into contact with. In the next three chapters, on power relations, issues relating to children and the financial aspects of divorce, I will return to these issues.

Chapter 5. Marital power and the law

5.1 Introduction

In marriage, like in all social relations, power comes into play. Looking back on their marriage, some of the interviewees described their marriage as being unequal, oppressive, or even violent. The central questions in this chapter are: how do the power relations between the spouses in transnational marriages operate; how do the spouses use their power in the divorce process and how does the divorce change existing marital power relations?

Two aspects of interpersonal power relations in marriage regularly came up in the interviews. On the one hand the division of labour in marriage and on the other hand domestic violence. In this chapter, I will analyse those two issues in the context of existing literature and relate them to law and the legal process. This chapter is divided into three parts. First, I will outline the theoretical framework on marital power relations which will be used in this chapter. Secondly, I will discuss interpersonal power relations in transnational marriages, paying special attention to the division of labour within marriage. Thirdly, I will discuss domestic violence, a recurring power-related theme in many of the interviews.

5.2 Theoretical framework: Marital power

In this chapter, I will use the concept of marital power as developed by Komter (1989, 1985). Komter studied marital power in Dutch marriages and defines power as 'the ability to affect consciously or unconsciously the emotions, attitudes, cognitions, or behaviour of someone else' (Komter 1989, p. 192). She makes a division between *manifest power*, *latent power*, and *invisible power* in marriage. These are based on the three dimensions of power distinguished by Lukes (1978). Manifest power, the first dimension of power, 'surfaces in visible outcomes such as attempts at change, conflicts, and strategies.' (Komter 1989, p. 192). Most research on marital power focuses on this first and most obvious dimension of power, mostly by describing differences in power over decision making. However, according to McDonald (1980), attention must not just go to the outcome of power, but also describe '(1) who controls the definition of the family situation which determines the possible range of relevant decisions; (2) who actually decides which decisions are to be confronted and which are not; and (3) in the case of delegated authority, who decides which individual will implement the final decision' (McDonald 1980, p. 844-845). These power processes can be seen as the second dimension of power. According to Komter, 'Latent power can be at stake when no changes or no conflicts are reported. It can be identified when the needs and wishes of the more powerful person are anticipated, or when the reasons for not desiring or attempting change or refraining from conflict produce resignation in anticipation of a negative reaction or fear of jeopardizing the marital

relationship.' (Komter 1989, p. 192). An example of research based on this dimension of power is that of Benjamin and Barash (2004). In their analysis of marital power, they used the concept of silencing, meaning that some topics or experiences in the marriage are excluded from being voiced or heard. When one of the partners breaks this rule and tries to discuss such a topic, he or she runs the risk of conflict and unease within the relationship.

The last dimension of power is described by Komter as invisible or hidden power. 'Invisible power was defined as the result of social or psychological mechanisms that do not necessarily surface in overt behaviour, or in latent grievances, but that may be manifest in systematic gender differences in mutual and self-esteem, differences in perceptions of, and legitimations concerning, everyday reality. The effects of invisible power generally escape awareness of the people involved.' (Komter 1989, p. 192). In her study, Komter found several invisible power mechanisms that helped maintain the status quo: *inequality in esteem for women and men*, *perceptual bias*, and *apparent consensus* (Komter 1989, p. 207). First of all, characteristics attached to men are culturally valued over characteristics attached to women. In Komter's study, husbands therefore generally possessed a higher degree of self-esteem, and they were also valued by themselves and their wives for more highly valued characteristics, which gave them more bargaining power. Secondly, there was a perceptual bias. Husbands systematically overestimated their own contributions to the household work and underestimated that of their wives, meaning they can dismiss a request for help by their wives as unjustified. Lastly, husbands and wives apparently seemed to agree on the reasons for the current situation being natural, necessary and unchangeable. However, reasons such as 'she enjoys it [doing the housework] more than he does' turned out to be untrue when measured by Komter (Komter 1989, p. 207-210). Although it would be interesting to see whether these invisible power mechanisms work the same in transnational marriages, where the partners may be socialised in different environments and do not necessarily share the same cultural values of gender or gender patterns (Ask 2006, p. 121; Connell 2002, p. 3), a study of this last dimension of power requires a different kind of research, including both spouses, and the dimension of invisible power is therefore not part of my analysis.

5.2.1 Resource theory

> She stayed at home, with the children. I was the man; I took care of the money. (Latif, Egyptian man separated from Dutch wife)[1]

In all three countries, domestic labour and care tasks have traditionally been seen as the wife's responsibility, while the husband was responsible for generating income. However, it must be noted that in Europe and the United States, and possibly Egypt and Morocco as well, this situation is historically more of an ideology than actual practice; income levels being so that most households could not survive on just one

1 The interviewee uses the Dutch word 'man', a word which means both adult male and husband.

salary, meant that women (and in many cases children) had to work as well (Helmers 2002, p. 24-25; Gentry, Commuri & Jun 2003, p. 3). Based upon this gendered model of the division of labour in the family, Blood and Wolfe (1960) devised their much-followed resource theory. In this theory, marriage is an exchange relationship or contract; resources brought into the marriage by both partners are exchanged. Men, as breadwinners, trade economic resources for the domestic labour and care provided by wives (Vogler 1998, p. 688-689; Tichenor 2005, p. 191).

However, this exchange model has been criticised. First of all, it is not an equal exchange, but a gendered one, in which the spouses have different power positions based on their gender role. According to Vogler, for example, resource theory only looks at money coming into the household and not at the way it is divided within the household. Moreover, resource theory does not pay attention to the wider context in society, such as gender differences in payment (Vogler 1998, p. 689). As Komter also noted, there is an 'implicit hierarchy in worth, whereby every individual man benefits from the cultural valuation of men over women [...]' (Komter 1989, p. 208).

Further support of these criticisms of resource theory can be found in studies of female breadwinners. As will be further discussed below, most interviewees that had a marriage in which the wife was the main or sole breadwinner described this not as a deliberate choice, but as a failure of the husband to provide. This was a frequent source of conflict and frustration as both husbands and wives expected otherwise. Similar patterns have been described by Luyckx (2000) in her research on migration marriages of second generation Turkish migrants living in Belgium. Women in migration marriages all described experiencing a crisis after their husband's migration to Belgium. At the start the women were responsible for all family work, both the ones they saw as feminine, such as household tasks, and the ones they saw as masculine, including supplying the main income and arranging financial and administrative matters. They felt this responsibility as a heavy burden. Meanwhile their husbands were bored, depressed and had nothing to do all day. Both the women Luyckx interviewed and their husbands did not fancy a gender role inversion by letting the husbands do the household work. Instead the women started looking for a job for their husbands as soon as possible. The tension was solved by giving the husband the male role of main breadwinner. Some of the husbands even started doing more of the household work after they found a job (Luyckx 2000, p. 51-53). Buitelaar (2000) describes the same situation for couples of Moroccan descent in the Netherlands. Such husbands are often judged as being too dependent and leaning too much on their wives. The women she interviewed thought the responsibility for male tasks was too heavy to bear; they did not want to take on that role. Especially women who had higher education seemed to be seeking a balance between autonomy and responsibility (Buitelaar 2000, p. 161-162).

Thus, in several studies, a change in gender roles regarding paid employment alone did not necessarily change the division of house work. Several American authors have tried to explain this pattern which has also been seen in US studies. Bartowski, in his article on marital division of labour in American Evangelical families, also notes that husbands who cannot fulfil the male-provider role outside of the

household are all the more likely to act according to the male-provider ideal inside the house, i.e. by non-participation in household work. Similarly, wives who worked full-time jobs invested in their roles as homemaker as well. Using a 'both/and gender strategy' enabled them to retain the homemaker label, which is closely connected to femininity in the conservative Protestant circles they live in (Bartowski 1999, p. 43, 58).

According to Pyke (1994), the meanings given to resources, such as an income or household work, brought into the marriage by one of the partners are crucial in determining the impact of these resources on marital power. In some situations, women's paid employment can even be seen as a burden her husband has to bear for her instead of an asset to the family income. Moreover, women can sometimes try to compensate for their partner's lack of social status or power outside the house by transferring all marital power to their husband (Pyke 1994, p. 80-81). Speelman noted a similar development in marriages between Dutch women and Egyptian men living in the Netherlands (Speelman 2001, p. 168).

Tichenor (2005) also found that women earning more and working in higher-status jobs than their husbands do not necessarily gain power in their marriages. Their money does not grant them power in the same way as it does the husband-breadwinners in more 'conventional' marriages. She explains this by referring to Lukes' third dimension of hidden power. She argues that '[...] gender ideology at the institutional level, specifically conventional conceptualisations of masculinity and femininity, shapes the interactions and gender identity constructions of spouses in ways that subvert the cultural link between money and power *for women* and reproduces men's dominance within marriage' (Tichenor 2005, p. 192).

Despite its limitations, many studies on marital power have been inspired by the economic exchange model of Blood and Wolfe (1960), relating marital power to some form of resources, be they material or non-material. Although there are many more issues in marriages on which couples can disagree, most research on marital power centres on the division of labour in the marriage. Moreover, it was also an important theme in the interviews. The marital division of labour both during the marriage and the divorce process will therefore be the second part of this chapter.

5.3 Marital power relations in transnational marriages

Although my focus on the topic of the division of labour in this chapter reproduces this existing bias in the marital power literature, the division of labour is also of specific interest in the study of transnational marriages and divorces. Migration and migration law can have an effect on the gendered division of labour, possibly providing new insights into the connection between the division of labour and marital power relations. Moreover, the marital division of labour can be of great importance in the divorce process because choices made during the marriage influence the possibilities of each partner to make a living and/or care for children after divorce. Below, the

division of labour in the transnational marriages in this research is discussed and connected to issues of power.

5.3.1 Issues of power and the division of labour in transnational marriages

There were significant differences between the interviews in this study with regard to the arrangements of income and responsibilities during the marriage. Of the 26 interviews containing information on the division of labour in the marriage, in 12 cases both spouses had participated in paid employment during the marriages.[2] However, this did not necessarily mean that both spouses provided equally, nor that both were equally involved in deciding how to spend the household income and divide property ownership. Of these 12, in four cases both partners were more or less equally responsible for providing. In three cases it was the husband who was employed for more hours or provided more income, while in five cases it was the wife. Furthermore, in seven cases only the husband had had paid employment and in three cases only the wife had had paid employment. Thus, in eight cases the wife was the main or sole provider, and in ten cases it was the husband. In four cases the couple had never actually lived together in the same country and thus never formed a communal household.

Whether the husband was the main or sole provider was often related to the couple having children and not to migration. In two Dutch-Egyptian cases it was the Egyptian husband who had migrated to the Netherlands and still was the main provider in his marriage. However, both had already had their own business and legal residence in the Netherlands when the couple first met. The specific issues of migration law and downward mobility at migration were thus not relevant, and they followed the 'standard' Dutch pattern of fathers working full-time and mothers working part-time after children are born.[3] When it was the wife who had migrated, there also seemed to be a less clear relationship with migration than one might have expected. Two Dutch women, for example, both already had been successfully employed in Egypt when they met their respective husbands. However, they stopped working when they had their first child. Two Moroccan women, one Dutch-Moroccan woman and one Egyptian woman, had never had paid employment at all and were living at the home of their parents before their marriage. In one case, for Malika, a Moroccan woman, working less hours was explicitly related to her migration. In Morocco she had been working full-time and caring for her daughter as a single mother when she

2 One interview was aborted and did not contain information about these issues.

3 Of all Dutch women between 15 and 65, only 44% were financially independent, compared to 76% of Dutch men. These figures are based on the year 2004. Being financially independent means a yearly income of over 10,300 after taxes. See also: http://www.cbs.nl/nl-NL/menu/themas/inkomen-bestedingen/publicaties/artikelen/archief/2006/2006-2011-wm.htm, and Korvorst & Traag 2010. In 2009, 57% of couples had two employed partners. However, only in 20% of these couples both partners work full-time, and in over 80% it was the husband who had a highest income. (CBS, see: http://www.cbs.nl/nl-NL/menu/themas/inkomen-bestedingen/publicaties/artikelen/archief/2011/2011-3291-wm.htm, accessed on 22 July 2013).

married a Dutch man and moved to the Netherlands. Because her diplomas were not recognised there she could only find badly-paid freelance employment. This caused conflicts in the relationship with her husband, who expected she would participate equally in providing for their family and especially for her own daughter.

In eight cases, the wife had a bigger share in providing for the family. In six of these families there were children. Four of these families lived in the Netherlands for (most of) their marriage, two in Morocco, one in Egypt. Amar, a Moroccan man, married to a Dutch wife living in Morocco explained how he and his wife decided that she would work and he would stay at home:

> She was working at [employer], a Dutch company. Our situation was also Dutch. I wasn't a strict Moroccan husband. [I asked her]: 'do you want to work or comfortably stay at home?' What do you think, she was young, had an education, she wanted to work. [... details about wife's education]. I did not work, it was not allowed because of the procedure.[4] I was also using heavy medication. I did everything at home. She wasn't able to do much; she did not even know how to cook. (Amar, Moroccan man, married to Dutch wife, living in Morocco)

During their marriage, Amar stayed at home and took care of their three children. This Moroccan man did not consider himself to be a typical Moroccan husband and described their inversed care arrangement as 'Dutch'. However, he still presents himself as the one deciding, *offering* his wife a choice instead of determining it for her as a 'strict Moroccan man' would do. Moreover, men being principal caregivers is an exception in the Netherlands as well (Korvorst and Traag 2010). During his stay in the Netherlands, this man had worked in child care and geriatric care. In the Netherlands these sectors are also generally considered women's employment.[5] The fact that his wife eventually deserted him and their children to return to the Netherlands, as described in chapter 6 also points to an inversion of the male breadwinner female caregiver pattern. As the couple resided in Morocco, the husband's care work was not legally compensated by maintenance after divorce or communal property. I will return to this below.

In contrast, in the other interviews a female breadwinner was not framed as a deliberate choice but as a failure of the husband to provide. This was regularly a source of conflict and frustration as both husbands and wives expected otherwise. Anna, a Dutch woman, for example, had already moved to Egypt and had employment there when she married her husband. When he lost his job, she unexpectedly became the sole provider:

> And I had my work at [employer] and well, a lot of things happened, but he did not get anything done. He was home all day, but he did not do anything. So there were some tensions,

4 I suspect the interviewee refers to the social security procedures for illness he started after being expelled from the Netherlands.

5 With 4.9% of employees in geriatric care being male and 3.4% in child care in 2006 (Van der Velde, Albers & Hekkert 2009, p. 8-13).

> because he expected from me that, when I came home, I would also cook for him, while he was hanging out on the couch all day, watching telly. So that's when the contradictions began. And then I also said, like, if you don't have a job, and you're at home all day, I really expect that, if I come home, at least you've done something about [the house]. And keep the house clean as long as you don't have a job. And he was less than pleased of course. (Anna, Dutch woman divorcing from Egyptian husband, living in Egypt. No children).

As can be seen from this quote, it was not a deliberate choice to become the main breadwinner in their marriage, and Anna considered it to be a temporary arrangement. Her husband did have a small income from an inheritance, but he spent this mainly on his debts and drinking habits. Although she was prepared to cover the costs of living on her own, she did expect of him to do the housekeeping in return. However, her husband did not comply, and, looking back, Anna interprets this as a first sign of the events taking place afterwards, when she discovered her husband had left her while stealing her personal belongings, placing her story in a *Bezness* frame.

In a second example, Rabia, a Moroccan woman divorced from a Dutch-Moroccan husband was the main breadwinner and the main caregiver in their marriage with six children, even though she was the one who had migrated in their marriage:

> I: Your children, if you were working, who took care of them?
> R: The day-care centre.
> I: They went to a day-care centre, so your husband did not take care of them?
> R: No, he thought that was something for women. He was a man. He took the car and took us to school. Then I stayed there all day, of course, and he had the entire day for himself. Or he went back to sleep until noon. And then he went into town and went somewhere. I don't know. And then, at three thirty, he came to pick us up. [...] Then I had extra duties, fetching the children from day-care, after a very long working day I did that, and then go home and cook, bathe the children, and so on. Just duties, and in the evenings, at eight, I'm pleased to sit at all, with the children. And the next morning it starts all over again. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband)

Even though Rabia did the 'men's job', providing for the family, her husband would not do the 'women's job', taking care of the children.

As described above, migration might possibly lead to reinforcement or inversion of gendered patterns of division of household labour. Though this seems to hold true in some of the cases described above, actual practice is far more complicated. For example, when the foreign partner had already been working in the country of residence before the marriage, the effects of migration were less visible. In those marriages the differences in income and working hours between the partners were related to children being born, following a gendered pattern of care, or even to sheer coincidence, such as a job being lost.

A specific power-related issue of marriages in which only one spouse has an income is the ability of the other partner to spend money. In all but one case in which

it was the husband who was the sole provider, he also took financial decisions, which sometimes caused conflicts between the partners:

> R: I had to ask everything. Everything. And if he thought: no, you do not need that, then the [answer] was no. [...] When his father died, he went [to Egypt]. When my mother died, I did not have money.
> I: So you did not return when your mother died?
> R: No. I did not have the money to think about it.
> I: But he could have given you the money?
> R: Yes. Certainly.
> I: But he did not do so?
> R: Yes. [he said:] I have to work, and who will take care of the children, and the food, and... (Sofia, Egyptian woman divorced from Egyptian husband, living in the Netherlands)

As she had no money of her own, it was up to her husband to grant Sofia the means to travel back to Egypt. As he preferred her to stay and take care of the children, she never managed to return to Egypt after her migration, and never saw her parents again.

For a Dutch-Moroccan woman the dependency of having to ask a husband for money was even a reason never to marry again:

> R: I don't want to [marry] anymore. Not for me. Once, but never again. You're always dependent on your husband. You've got nothing. You have to stay dependent on your husband, as you have no income. You're doing nothing. You don't work, you've got nothing. He always has to take you somewhere. [...] All my friends, they're fine. They all work. They all have their own lives. If I look at myself, if I had stayed in the Netherlands, I maybe could also have built something of my own. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

In this fragment, Jamila clearly makes the link between working, having an income, and independence. She sees dependence and control, both financially as well as control over movement and space, as inherent aspects of marriage in Morocco. In contrast, she described the Netherlands as a place where this dependence and control do not exist in marriage. Her Dutch friends, even though they are married and have children, have a life of their own, something she might have had too, if her parents had not taken her to Morocco.

Malika, a Moroccan woman who had only a small freelance job and earned much less than her Dutch husband, resented her husband for not letting her and her daughter share in his wealth. Moreover, even when her husband sometimes paid her expenses, he always kept control:

> R: If I thought, for example, I need a new pair of trousers. We went to the shop. Find what you like, what's your size. He will pay with his card and then we go home. That's it. I was like a child. But, a child also needs to buy some things for itself, without the father or the mother

> present, right? (Malika, Moroccan woman divorced from Dutch husband, living in the Netherlands)

In this case, the husband and wife struggled over control of the finances and Malika felt she lacked the basic need of autonomy. By negatively comparing herself to a child, she reinforces her statement that the financial control her husband exerted over her was extreme.

Although the inability to spend money independently was a recurring theme in stories of the interviewed housewives, illustrating the tensions of being in a dependent position financially, the earnings of women did not automatically bring them similar power of control over financial resources, or even autonomy. As has been discussed above, women being the main providers in the marriage did not necessarily mean that the husband would do the care work. Apparently, a position as a provider did not automatically inverse the gendered pattern of labour and, moreover, was not accompanied by a shift in power relations. To Rabia being responsible for both the housekeeping, taking care of six children, and providing the family income was a great burden and no voluntarily choice or strategy:

> I felt myself becoming smaller and smaller, so to say. The open and free person I was, was completely gone. The entire environment got smaller and darker to me. So well, I did not pay any attention to myself. I was a well-dressed girl. I wore mini-skirts. I also wore those nice boots. But afterwards, it was my hair in a bun and work and the children [sighs]. I did not have time to talk and to cry. And for days on end, days on end, he was free and I was wrecked. Completely wiped out. As worn out as I was, I really couldn't go on. That's why I asked for help. That's how deep it was. After all those years, it was finished. The day he left, I was also pleased. It was better, for the children and for me. I really was released. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

The departure of her husband was a relief from what Rabia felt to be an unequal and unfair relationship. Taking care of all household labour on her own was actually a lighter burden than during the marriage. However, even though she had been providing during their marriage, her former husband had been managing the finances, giving her no control over or inspection of her own earnings. When he eventually left her, he left behind a lot of debts and she had no idea how to handle administrative matters in the Netherlands.

As can be seen from the examples above, the connection between power relations and the division of labour is not automatically clear. On the one hand, several women, in different settings, complained about how their former husband tightly controlled the money he earned giving them insufficient or even no money to spend on their own. On the other hand, some women who were the main provider in their relationship still lacked control over spending. Moreover, their providing as a resource was most of the time not sufficient to 'trade' for domestic labour and care, as in classical resource theory. Tichenor's statement that money does not grant women power in the same way as it does husband-breadwinners in more 'conventional' mar-

riages seems to be reflected in the interviews in this study (Tichenor 2005: p. 192). As we have seen, some of the interviewed women experienced how their former husbands used their greater access to money as a means of power and control, while other women failed to exercise similar differences in wealth to have power over their husbands. These examples mostly concern Komter's first level of power, manifest power. Below, I will continue with a discussion of how these divisions of labour played a role in legal procedures.

5.3.2 Division of labour and legal procedures

As will be discussed in more detail in chapter 7, in all three countries, legal provisions for marital property and maintenance are based on gendered patterns of household labour, compensating women for care work. In Morocco and Egypt, these provisions are explicitly gendered, while in the Netherlands laws use gender-neutral terms, even though they produce similar gendered effects. This means that in case of a full inversion of gender roles, a care-giving husband without paid employment in Egypt or Morocco has no rights to maintenance, while in the Netherlands, men are entitled to maintenance payments based on their needs and the ability of the former wife to pay, regardless of the *actual* division of labour during the marriage. Thus, there was little space to discuss the division of labour during the marriage in the divorce procedure. As we have seen above, a bread-winning wife did not automatically mean that the husband would take (full) responsibility for care work. For example, Rabia, was both the bread-winner as well as the caregiver for their six children. This was, however, not an issue when, sometime after the divorce, she received a request to pay spousal maintenance to her former husband.[6]

Furthermore, some former spouses tried to retain their control over spending or movement after divorce, even when child access or maintenance payments had been arranged by the courts:

> R: He thinks he's still in charge. And he still tries to boss me around. Because I've got his little daughter with me. [...] For example, what clothes are you wearing? Where are you? Are you outside? I tell him on the phone: why do you ask me this? You've got your own wife. He says: but you're the mother of my daughter. I don't want a bad mother for my daughter. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco).

This former husband framed his controlling from the perspective of the interest of their daughter, trying to ensure that his ex-wife did not do things, such as going out of the house, which would make her a bad parent to their daughter in his eyes. This was a continuation of the behaviour during the marriage, in which this interviewee had been mostly confined to her home. In a second case a former husband first used maintenance payments, and then the residence of the children to keep control over his former wife:

6 For a more thorough discussion of this request, see chapter 7.

> Up to today he still tries. Despite me being financially independent. Now he tries to control me through the children. Right, if you don't do that, the children won't come. [...] Listen, if you don't pay, they just won't come. They will stay here. Well, I just can't do that to my children. So he thinks. I've got 2,500 LE each month to live by.[7] I'm really having difficulty keeping body and soul together. It's just badgering and trying to keep control, you understand? (Elizabeth, Dutch woman divorced from Egyptian husband, living in Egypt)

Again, this fight over money was a continuation of behaviour during their marriage, when the husband controlled all financial means, including those earned by the wife. However, now they are divorced, both these wives resist these claims of power, either openly or subvertedly.

In the interviews, another important means of exercising direct power over a spouse was regularly mentioned, domestic violence. Looking back on violent relationships, some interviewees also discussed Komter's second dimension of power, latent power. I will further discuss this below.

5.4 Marital power and domestic violence

5.4.1 Introduction

When I started this research project I intended to exclude cases of domestic violence. I did not want to write a story of 'extreme cases' but of 'ordinary divorces', the distinction being based on a presumption that domestic violence was rare and exceptional. My choice for 'ordinary divorces' was both informed by an unwillingness to reproduce a dominant discourse of Muslim men as being violent as well as by my own unease with the subject.[8] However, when I started doing the fieldwork, references to domestic violence kept coming up in the interviews. Still, it was not until I did a systematic analysis of the interviews with divorced spouses for references to domestic violence that I gained a grasp of the profound presence of the issue in my research material. Out of 26 interviews, no less than 11 interviewed spouses, ten women and one man, described how they had been the victim of some form of psychological or physical violence. All women by their former husbands, the man by his former family-in-law who beat him up after his wife left him. On the other hand, three men mentioned being falsely accused of violence towards their former wife or their children in the divorce process. This also is a remarkable number considering I

7 A little over 300 euro at the time of the interview and only 1/6 of the maintenance her former husband paid her when the children were still living with her.

8 This meant that, for example, when approaching NGOs or lawyers for potential respondents in the first phase of my fieldwork I also asked them not to include cases of domestic violence. However, after the first four interviews all contained at least some reference to domestic violence I changed my approach and no longer mentioned domestic violence as an issue to exclude when looking for research participants, although I did not systematically include it as an interview topic.

only interviewed five men. In short, the issue of domestic violence claimed a place for itself in this dissertation.

With almost half of the women in this study reporting incidents of domestic violence, mostly without having been asked questions about the topic, this is higher than can be expected on the basis of the national statistics. How can this be explained? Are transnational marriages more prone to violence than national marriages? First of all, this study of transnational couples is small and not a random sample. Its results cannot be generalised to all transnational Dutch-Moroccan and Dutch-Egyptian marriages. Secondly, as discussed in the methodology section of the introduction, I have the impression that special cases are somewhat overly present in my research sample. This might be explained by having found many respondents through NGOs and professionals, who may tend to remember cases that are somehow extraordinary, for example those including issues of involuntary abandonment in the country of origin, parental child abduction, or severe violence.

Nevertheless, it could also be argued that transnational marriages could be more prone to domestic violence. In the domestic violence literature, several risk factors are described with regard to domestic violence which are especially relevant to transnational couples. Jewkes et al., for example, found that the wives of unemployed men and migrant workers in South-Africa had a greater chance of being abused (Jewkes, Levin & Penn-Kekana 2002, p. 1607). Anderson (1997) found in an US study that status differences between spouses can have a gendered effect on the risk of domestic violence. When women earn more than their husbands, those men have a 3.5-5.5 times higher chance of perpetrating violence compared to men with equal earnings. Similarly, odds were up to 40% lower when men earn more than their wives (Anderson 1997: p. 664).

Aside from the added risk factors in transnational marriages, statistics on intimate partner violence in all three countries are mostly about still-married couples or about all violence ever experienced, regardless of marital status. It could very well be that amongst divorcing couples violence is more common, as marital conflict is a risk factor for domestic violence (Jewkes, Levin & Penn-Kekana 2002, p. 1604). Additionally, a Dutch study on divorce found that in 20% of divorces with minor children and 10% of divorces without minor children, physical violence was a reason for the divorce (Clement, Van Egten & De Hoog 2008, p. 43).[9] As most respondents who had experienced domestic violence in their transnational marriage did not label it as the reason for divorce, this might indicate that the actual prevalence of domestic violence in Dutch divorces might be higher than the 10% or 20% who considered it a reason for divorce. Below, I will start by a short theoretical outline of domestic violence as a power-related issue. Subsequently I will show the diversity and complexity of the presence of violence in the divorce cases in this research. After this, I will further discuss how these experiences and accusations of domestic violence played a role in the court cases of the interviewees.

9 For men in both cases 1%.

5.4.2 Domestic violence as a power-related issue

In all three countries, research has been done on the prevalence of domestic violence in the general population. However, the results of these studies are not easily compared, due to methodological differences. In Morocco and Egypt, for example, only violence used by husbands against wives was researched. Moreover, different forms of violence were studied, in Morocco this also included the withdrawal of financial support. Therefore, I will limit the discussion here to physical violence, which was studied in all three countries, although there was no specific study of transnational marriages. According to research by Anaruz, an organisation of *centres d'écoute* (legal aid centres) in Morocco, 30.4% of women reported have been subjected to physical violence by their spouse.[10] Moroccans living in the Netherlands, conversely, seem to report far less domestic violence, with 6% of men and 16% of women having ever been the victim of physical violence (not limited to spousal violence). However, the response amongst Dutch-Moroccans was low, and these figures are therefore not very reliable (Van Dijk & Oppenhuis 2002: p. 21-24).[11] Interestingly, this is also less than native Dutch, of which 35% of men and 34% of women reported ever having been the victim of physical domestic violence. Again, this figure is not limited to spousal violence.[12] In Egypt, 34% of women reported having ever been beaten by their *current husband* (Diop-Sidibé, Campbell & Becker 2006, p. 1265). Although it is hard to compare, due to the methodological difference between these studies, the prevalence of spousal physical violence by men to their wives seems to be roughly similar in the three countries.

There is an ongoing debate in the literature on domestic violence, already starting with the terms used, such as gender-based violence or intimate partner violence. In this debate on domestic violence the role of gender is central. Intimate partner violence is either described as gender-based, with mostly male perpetrators and female victims, connected to gender relations in society or described as simply an escalation of everyday conflicts in relationships, in which women are just as likely to commit violence as men (Johnson & Leone 2005; Römkens 2010; Johnson & Ferraro 2000). According to Römkens these opposing views can be explained by methodological and also ideological differences between the two fields. The intimate partner violence often studied by qualitative studies taking into account the context and revealing patterns of violence and control is not the same kind of violence studied in large-scale quantitative population studies in which violent incidents are studied outside of their context. Studies of the first kind reveal that women are more often the victims of

10 Unfortunately I have not been able to access the full report, but a summary can be found on the Women Living Under Muslim Law website http://www.wluml.org/fr/node/6113, accessed 13 May 2013.

11 There were more reasons to suspect underreporting, for example that no Dutch-Moroccans over 50 reported any domestic violence (Van Dijk & Oppenhuis 2002, p. 9, p. 21-24).

12 Movisie factsheet, November 2009. http://www.movisie.nl/onderwerpen/huiselijk_geweld/docs/websheet_huiselijk-geweld_jan_2010.pdf, accessed 15 August 2012. See also: Van Dijk & Oppenhuis 2002.

severe partner violence; studies of the second kind show that women and men use partner violence on an equal basis (Römkens 2010, p. 14-17). Johnson has developed a typology of different forms of violence in intimate relationships. *Intimate terrorism* is part of a systematic pattern of control, in which one partner attempts to exert general control over the other. *Situational couple violence* or common couple violence is less coherent and consists of separate conflicts escalating into violence. This typology does not describe the level of violence, both forms can range from relatively innocuous to severe and from infrequent incidents to regular assault (Johnson & Leone 2005, p. 322-325; Johnson & Ferraro 2000).

Control being the main factor, intimate terrorism is closely connected to power relations in the marriage. Anderson proposes analysing violence as a way of doing masculinity:

> Gender theory proposes that violence is a resource for constructing masculinity, and thus the use of violence will have different meanings for women and men. [...] The integrated theory proposed here suggests that these elements of the structural environment may influence violence because they also influence resources for power within inter-personal relationships. Higher reported rates of violence among young, cohabiting, and non- White men with low levels of education and income may reflect their limited alternatives for demonstrating a masculine identity. When they have fewer status resources than their female partners, some men may rely on violence as a means of gaining power and establishing masculine difference. (Anderson 1997: p.658-659)

As discussed above, transnational marriages sometimes include inversions of or changes to the gendered division of work in marriage. In such cases, violence may be an alternative resource of power. Below I will now turn to the interview material to discuss the issue of domestic violence and its consequences for court cases.

5.4.2 Forms of violence

> R: Well, then I spent my holiday here [in Morocco] and also some really bad things just happened with that man. Because of course, in a certain way, he just claimed me. I'm from [North-East Morocco], and then [place], that's a smaller village, even far more conservative. And that man claimed me. He also was, right away, like, he just hit me once. He just, just really, well, not beat me up, I mean that just doesn't happen to me. I just got a solid blow. And nobody in the family said anything or stood up for me. (Naima, Dutch-Moroccan woman divorced from Moroccan husband]

> R: He hit me. Even after the wedding [of former husband and another woman, the end of their marriage] I still had, I was still covered in bruises. [...] That was the last time he completely beat me up. I went to the hospital. I was admitted to the hospital. I even still got the papers. I was completely covered in bruises. [...]
> I: Did he do it before? Hit you?

> R: It was always like that. If I opened my mouth like: [ex-husband], your mother said this to me, or [ex-husband] I'm tired. It was always, you know, like, shut up. I always had bruises. But I never dared show them. He always said to me like: you can never tell anyone about our private life, about our marriage.
> I: So nobody knew?
> R: Nobody knew what happened at home. And nobody was allowed to know. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

The use of violence in relationships can take many forms and degrees, ranging from a single push to a pattern of battering. The partner violence mentioned by the interviewees in this study varied widely with regard to their severity and how often it happened. Three women mentioned having sustained physical injury because of violence used by their (former) husbands. However, on closer examination, nearly all incidents mentioned by female respondents were related to a pattern of domination and control. Even when there was just a single incident of violence, like in the quote from Jamila at the start of this section, the story was recounted as a symptom of an ongoing effort of the husband to gain control over his wife, and one of the reasons she broke off the marriage before the couple ever started living together. Similarly, when a Dutch woman recounted her experiences with her Moroccan husband, she described an incident of violence as part of an ongoing story about control.

> R: It was all small things, but together they weighed incredibly heavy. He always tried, like, even when he was gone things should go in his way. [...] So also when he was absent, he tried to keep control. [...] Well, then there was the devil to pay again. So you constantly tread on eggs, and even that's not good enough. Something's always happening. He thought that [the floor] should be mopped down more often. Right, I said, there's the mop and there's the floor, go ahead. But that wasn't what was wanted. I said: I'm already working my ass off. I've got a full-time job, I have to do those children and you are whining to me about the floor that needs to be done. I said: whenever am I going to do that? [...]
> I remember it really well. [It was] the third day [after son was born], when the baby blues start. He was so angry that the child kept crying. And I was sitting there, on the nursery floor, crying, like, I did not know what to do anymore either. And then he pushed me against the wall, so I got something of a blow, saw a flash of light. Well, that was not the main issue, but it stayed like that. And he demanded that I go on dragging the child around. (Ingrid, Dutch woman divorced from Moroccan husband, living in the Netherlands)

In this quote Ingrid dismisses the push against the wall as not important; it was the pattern of control and the distribution of labour that bothered her in the relationship. In the interview, she did not explicitly label this incident, or her relationship, as being violent. Another Dutch woman described how she learned from a women's empowerment training to label what happened in her relationship as violence.

> When he went to Schiphol [airport] he always drove full speed, on purpose, you know? I was incredibly afraid. Even if I said: don't do that, I'm afraid, he just kept on driving full speed.

> Villainous. He just did not want to show consideration to me. That's psychological abuse. I learnt that in that course. (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands)

Looking back on her marriage, which was characterised by recurring patterns of intimidation and control (but not mentioning any physical violence), Margriet now labels her husband's behaviour as violent, even though she did not do so at the time. This had effects on how she felt and behaved in her marriage.

> R: Well, all those years, you get into a kind of pattern, right? If you've been oppressed in your marriage for such a long time, you get into a pattern that everything revolves around him, you know? He's coming home. Oh, is everything tidy, do we have food he likes. You're constantly complying to his wishes, and with his likes. You don't think about yourself anymore. I was not paying any attention to myself. Did not buy clothes for myself. Why? He was leaving on his own anyway. (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands)

In this quote, Margriet illustrates Komter's second dimension of power, latent power. In her married life, she tried to anticipate the wishes of her husband, out of fear for his reactions and to avoid conflicts. After divorce and participating in a women's empowerment course, Margriet learned to see this normally invisible second dimension of power in her own marriage. These stories show how through a pattern of control, intimate terrorism took place in some of these marriages even in the absence of (severe) physical violence.

Stories of situational or common couple violence were limited to one Moroccan husband's defensive narrative. Farid admitted having used violence during arguments a few times, but not in the degree his former wife claimed. Moreover, he claims she was violent and aggressive as well, especially to their child. Her older children from an earlier marriage had already been taken from her by social workers and placed in care. During this confusing interview, an overall picture of a couple using mutual violence in escalating fights arose, making this more a story of common couple violence than of intimate terrorism in which references to a pattern of control were absent.

It is remarkable that there is only one story of common couple violence, told by a man, and so many stories of intimate terrorism told by women. Like in the literature divide mentioned above, I think this is at least partly connected to methodological issues. As I did not systematically ask respondents about domestic violence, its presence often only came up as an illustration of what was 'wrong' with the marriage or their former spouse, generally a pattern of control. It is therefore possible that I 'missed' less severe cases of common couple violence. I will now turn to the way the presence of domestic violence has played a role in court procedures in transnational divorce.

5.4.3 Domestic violence and court procedures

How can these issues of domestic violence be linked to law and the divorce procedure? In Morocco and Egypt, fault-based divorce on the basis of harm, and arrangements for the mut`a, as discussed in the legal chapter, make violence an important issue in divorce procedures, although proof is needed to back a claim. However, no-fault divorce, introduced in the 1970s in the Netherlands and more recently in Morocco and Egypt, does not provide space for discussing wrongs in the relationship in the divorce procedure, as they have become irrelevant. Only in disputes over child care and child access can domestic violence play a role, especially if one of the parents has been violent to the children. However, claims of the mother that the father has abused her are in itself not sufficient to block contact between the father and the children. Especially if a mother does not have proof, such claims might even potentially threaten her chances of having child residence, as speaking negatively about the father can be seen as a disqualification of her parenthood.[13] In this research, none of the women who had been the victims of domestic violence used this as an argument in a court case over child custody or contact or to get a fault-based divorce. Two fathers, on the other hand, told how they had been falsely accused of domestic violence and child abuse by their former wives in a court case on child contact:

> Then there was another court case. And it turned out that she, that her lawyer was arguing that I should not see the children, because of all the things I did to them. 'See, see!' So he came with a rubbish story, that I pushed him [son] down a slope, on purpose, and that he had broken his hip, or I don't know what. He did not have anything whatsoever with his hips, it was all bizarre rubbish. And another story, I had threatened them with knives. And she had a few more of those stories. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

After his wife had left with the children René found her notes for preparing the court case and instructing their children what to say to social workers and judges:

> She wrote 'sexual abuse?' 'Not to mention but to imply' she wrote below.[14] Later, I found all kinds of things she told social workers from all sorts of agencies who came to help, or supportive agencies who came to take care of her, she had also sent them all kinds of reports. [...] She claimed I abused [son], that I sexually abused [daughter] as well. But those things were never specified. She sent things to social workers and kept copies, and I found those, in her things. It was all the order of the day, those stories, those claims. A report, notes about what [son] should tell the judge, because he was 12 and allowed to come to the judge and say what

13 See for a more elaborate discussion chapter 6. A few lawyers I interviewed for this research also mentioned that if there had been violence in the marriage they generally advised mothers not to mention this fact in court unless they had proof, such as a criminal conviction of the father.

14 When quoting from his former wife's notes, René uses English instead of Dutch.

> he thought about it. It was all completely prepared. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

In appeal, René gave these notes of his wife to the court to prove his innocence, and they were accepted as supporting his case. However, his wife had already left the Netherlands with the children, and his attempts to a contact arrangement failed again.

In the story of Farid, where he explained how some common couple violence took place between him and his former wife, allegations of domestic violence were also important in a court case on child contact. Farid, a Moroccan father was accused by his former Dutch wife of committing domestic violence. She had him prosecuted and started a court procedure having him blocked from having access to their child because of the violence and because she was afraid he would abduct the children to Morocco. Because of language difficulties I did not manage to get a clear picture of whether he was convicted for the violence or not, and whether he was accused of using violence against his wife or also against the children. However, it was clear that this procedure was successful even though he appealed all decisions. As a result Farid was expelled from the Netherlands and was no longer able to see his child informally as before.[15] In this marriage, the Dutch wife acted as a gatekeeper, both to the child and to the Netherlands, through the court procedure by effectively blocking her husband from both.

Interestingly, domestic violence and accusations of domestic violence also played a role in one complicated conflict on the division of property and, more specifically, on the right to stay in the conjugal home. As Malika, the Moroccan wife, had a child (from an earlier marriage), she was awarded the right to stay in the house her Dutch husband owned. He resented this situation and reported his wife to the child abuse centre AMK, hoping she would lose custody over her child, enabling him to claim the house. Moreover, he intensified the domestic violence already taking place during the marriage, including acts of vandalism on the house. To the dismay of Malika's lawyer, the allegations of domestic violence and child abuse were discussed during court sessions on the division of property, even though there was no legal ground for such a discussion.

Family law is not the only part of law applicable on domestic violence. It can, in all three countries, also be punished under criminal law. In this study, four interviewees, three women and one man went to the police to report violence. Driss, the Moroccan husband of a Dutch-Moroccan wife reported a violent housebreaking by his family-in-law. A Moroccan woman living in the Netherlands, a Dutch woman returned to the Netherlands from Egypt and a Dutch-Moroccan woman living in Morocco also tried to have their (former) husband prosecuted for abuse. However, in all three cases the police did not want to file their reports:

15 As their marriage had not lasted long enough to grant him independent residence and because there was no contact arrangement, he could not claim residence on the ground of the presence of his child in the Netherlands.

> R: You have to report to the police. I did that at the police station. I was covered in bruises. But from the doctor, I got a form which said 'seven days'. And at the police station, it turned out that seven days was not enough to punish him. I thought it was very weird.
> I: Right, so seven days in hospital?
> R: No, seven days on the form was not enough. Not enough. They said: the law won't punish unless there are 21 days on the paper from the doctor. Only then he will be punished. And 21 days on the paper you only get when it is bleeding or if you've got a broken hand or something is broken. But covered in bruises is only seven days. (Jamila, Dutch-Moroccan wife divorced from Moroccan husband, living in Morocco)

The interviewee and I both failed to understand at the time, a fact which could be related to the interviewee's migration background, the fact that the Moroccan penal code discriminates between different kinds of violence based on the result of the violence, instead of the act itself. The injury is measured in days of disability. Only severe injuries, more than 20 days of disability, qualify as high-level misdemeanour. According to a Global Rights report the police will generally only respond to claims of domestic violence for such severe injuries (Morocco: Challenges with addressing domestic violence in compliance with the Convention Against Torture, 47th Session of the Committee Against Torture (31 October-25 November 2011) 2011, p. 8). Malika had a similar experience in the Netherlands. The Dutch police at first refused to take her report. She blames this on the influence her Dutch husband has in their small village. Only after she threatened to file the report in another city the local police recorded her statement. Both husbands were never prosecuted however. In the last case, Manon, a Dutch woman, left Egypt to flee from her violent husband. After her return to the Netherlands she tried to report him to the Dutch police and immigration officers, hoping to block his future entrance to the Netherlands. Her attempt failed, as she did not have sufficient evidence and the offences had been committed outside of the Netherlands.

Two husbands also told how their (former) wives had reported them to the police, although both denied being violent. Farid's case ended in losing his rights to child contact, as has already been discussed above. In the other case, Latif, an Egyptian man, told how he was suddenly summoned to the police station after spending a day with his Dutch wife in a wellness resort in a final reconciliation attempt to save their marriage:

> In the end we had sex. It was the first time in ten years. And the next day she reported me to the police, for abuse. [...] She had asked me to come for dinner, but nobody was home. So I called her: 'where are you?' 'We are reporting a crime. Here the police on the phone'. [The police officer said:] 'Are you coming? Your wife is hysterical'. I wanted to come the next morning, but I had to come right away, or they would arrest me. I told everything, in the lobby. I could talk or wait for a lawyer. Next day I called the police for ten minutes and then I was free. It was very clear. I was in Egypt at the moment of the accusation. [...] I've got all the evidence, even photos. We were in a wellness resort, I've got the tickets. At the date of the

> 'rape' she was working at [employer], there are cameras there.[16] I can prove it was a false report. (Latif, Egyptian man separated from Dutch partner, living in the Netherlands, two children).

In the end, the case was never brought before a judge. According to Latif, the police did not believe his wife. He was disappointed, as he wanted to go to court to tell his side of the story and have his name cleared. He kept calling police for news about the case, and did not give up:

> I'm still collecting evidence. I hope she lets her tongue run away with her. In all those years of marriage I pushed her once. That's all. Still, I'm registered at the police. I've been a good man; I never hit her, never. (Latif)

In the end, this incident never played a role in any court case. The couple informally decided to share the parenting equally in a co-parenting arrangement.

It is difficult to balance these stories of false accusations by men with the stories of abuse and control by women. Allegations of domestic violence, and especially of child abuse, first uttered in the context of divorce, child contact or custody cases are sometimes seen as suspect, forged weapons in a struggle over the children. However, several studies on child abuse allegations in divorce cases have shown that, contrary to public belief, forged accusations are rare (Geurts 2009; Brown et al. 2001; Jaffe, Crooks, and Poisson 2003). In this research, I have chosen to analyse the stories and narratives of respondents. I do not aim to question whether these stories are 'true' facts. Instead, these stories about divorce give valuable insights in how spouses experienced their marriage and divorce and, moreover, in the norms and images that inform their conceptions of proper behaviour between spouses and the way they deal with law.

5.5 Conclusion

Marital power relations are complex. The main question in this chapter was: how do the power relations between the spouses in transnational marriages operate; how do the spouses use their power in the divorce process and how does the divorce change existing marital power relations? To answer this question I focussed on two power-related themes which were important in the interviews; the marital division of labour and domestic violence. There are many aspects of marital power. Due to the focus on the division of labour and domestic violence, this chapter mostly discussed issues of dominant men and vulnerable women, with gender taking a central position in marital power relations. This does not mean, however, that power relations are always one-dimensional and the same in all aspects of marriage. As was demonstrated by several stories of female breadwinners the relations between the gendered division of labour

16 Quotation marks gesticulated by interviewee.

and marital power were not as clear as they would seem based on resource theory. Wives gaining more financial resources because of paid employment did not necessarily gain the marital power connected to these resources. However, further research is necessary to unravel the influence of other status inequalities specific for transnational marriage, such as residence status, ethnicity, social and cultural capital and their intersections with gender and migration.

In this chapter, I have hinted at some connections between marital power relations and the law. On the one hand, most respondents kept their issues of unequal power relations and domestic violence outside of their divorce procedure. No-fault divorce does not provide a space for discussing the wrongs of the marriage, nor do laws regarding financial matters after divorce take into account the actual division of labour during the marriage. On the other hand, Dutch migration law was used as an instrument of power, for example in abandoning a spouse outside of the Netherlands. Some spouses also tried to involve the law in domestic violence cases, by reporting to the police, but all failed to mobilise the law in such a way. Moreover, because of legal arrangements like maintenance and child care, power relations connected to financial dependency and violence can continue after the divorce.

It is difficult to draw conclusions on marital power relations on the basis of a research on transnational divorce. In this chapter I recounted stories *about* power, and thus mostly about decision making, Komter's first dimension of power. Still, some latent dimensions of power, the second dimension of power in Komter's division, become visible after divorce ends the marriage. Looking back on their marriage, some women told stories of control and violence which they had not recognised as such when they were still married to their former husbands. As most stories which deal with marital power deal with attempt by the other spouse to exercise power, they are stories, about powerlessness, resistance and agency. These stories of victimhood can in themselves also carry a certain power, which is also related to gender, ethnicity and social class. As we have seen in discussions of the *Bezness*-frame in chapter 4, not all interviewees have equal possibilities to claim a position of victimhood. A more thorough discussion of power relations in transnational marriages would thus require research in which both (former) spouses are included.

Chapter 6. Taking care of the children. Organising child care after divorce

> Meanwhile I have tried to convince [ex-wife] about what happened. What she has done to the children. That it really won't do, and that it's just very bad for the children. And that something needs to be fixed. I tried talking to her, on the phone, in conversations, emails. And she keeps refusing, she maintains she's the best mother in the world, and so on. Because that's how she sees herself. But not to my liking. (René, Dutch father divorced from Egyptian mother, living in the Netherlands)

6.1 Introduction

The Dutch father quoted above was involved in prolonged court cases on topics related to child care after divorce, such as the residence of the children, contact and maintenance. René blames his former wife for harming the children by keeping them away from him and by involving them in conflicts between their parents. His story is framed completely in terms of the best interest of the children. Kaganas and Day-Sclater (2004) have demonstrated how, in contact disputes, parents and the court share a welfare discourse, in which parents constantly try to present themselves as good parents, acting in the best interest of their child. As will be demonstrated in this chapter, a similar welfare discourse is present in both the three legal systems as well as in the interviews in this research. The main question in this chapter is how the parents in this research arranged child care after divorce and how parents related these arrangements to the laws and ideologies of the different legal systems, including the welfare discourse.

Below I will discuss both the legal context in all three countries regarding child custody and visitation as well as the actual child care arrangements the transnational families in this research have made after divorce. I will first describe the legal context of child care after divorce in Egypt, Morocco and the Netherlands, paying specific attention to the welfare discourse, which is dominant in the Netherlands and upcoming in Morocco and Egypt. In the interviews with parents in Dutch-Moroccan and Dutch-Egyptian divorces, notions of "good" and "bad" parenthood after transnational divorce also played an important role. After outlining these notions, I will detail the arrangements parents have actually made for residence, contact, child maintenance and how and why these arrangements were decided upon.

6.2 The legal context of child care after divorce

Since 2004, all three countries have made certain changes with regard to the legal provisions for child care after divorce. Those changes have already been introduced in chapter 3 but will be described in more detail in this paragraph. As some of the

divorces in this research took place already in the 1980s, before the introduction of many of the reforms discussed below, I will also include older versions of the laws with regard to child residence, maintenance and contact after divorce. After discussing the three countries I will pay specific attention to how the concept of the best interest of the child (i.e. the welfare discourse) played a role in recent legal reforms.

In Morocco, Egypt and the Netherlands a multitude of legal, semi-legal and non-legal terms are used to describe child care arrangements after divorce. These terms do not always translate easily into – legal – English, because of the differences in legal culture. In this chapter I have chosen to use the term residence and residential parent to describe the place and the parent with whom the children live. The term residence as used in this book describes a *de facto* situation and is not necessarily connected to the legal position of the parents. As will be described below, in most cases in this research the children stayed with one of the parents, implying that this resident parent provides the majority of day-to-day care. Child contact is the contact between the non-residential parent and the child(ren). Again, this is the actual contact taking place, regardless of there being a formal agreement or contact order by a court.

In legal literature, as well as actual law, child care after divorce is often discussed in terms of rights. It must be noted that for mothers as well as fathers, child care can be a privilege as well as a burden. Apart from the hard work involved, having the responsibility for day-to-day care can be expensive and limit possibilities for paid employment, thus possibly leading to severe poverty. Many of the world's poor are single mothers.[1] This is especially true in developing countries like Morocco or Egypt but also of importance in the Netherlands. Below, when discussing laws regarding child care after divorce in the three countries, I will use the terms that are used in the legal systems themselves, including the term rights, shifting to *de facto* terms when discussing the interviews.

6.2.1 Egypt

For a long time, public and academic debates in Egypt pertaining to divorce have tended to focus on the issues and problems of women and enhancing women's rights versus claims of cultural authenticity and Islam. This has resulted in several legal changes, among which the introduction of the *khul'* divorce in 2000 and the extension of the age of *hadana* to 15 in 2005. In Egypt, the law regarding child care after divorce is strongly and explicitly gendered. *Hadana*, often translated as custody, encompasses day-to-day care of the child. It was first codified in law nr. 25 of 1929, which has been amended by law 100 of 1985 and law nr. 4 of 2005. After divorce, mothers have the first right to *hadana*:

> The right of custody [over a minor child] belongs to the mother, and, after her, to those women within the prohibited degrees of relationship [for marriage], with those related to the

1 See for a more elaborate discussion of poverty in female single-headed households: Buvinić & Gupta 1997.

> mother preceding those related to the father, taking into consideration the nearest on both sides, according to the following order: The mother, the mother's mother and maternal grandmothers how-high-soever, full sisters, uterine sisters, consanguine sisters, the daughter of a full sister, [... etc., etc.]. If no female custodian can be found from among these women, if none of them qualifies for custody, or if the period of female custody has expired, the right of custody transfers to the male agnates ('usba) in accordance with the order of entitlements of inheritance, the priority of the true grandfather over brothers being observed therein [...]. (Art. 20, law no. 100 of 1985, translation by El-Alami 1994, p. 127-129)

As can be seen, there is a strong preference for a female custodian, preferably from the mother's family. If the mother cannot take *hadana* over her children, or remarries, her mother is the first to take over. Only if there are no suitable female relatives at all, the father and other male relatives become eligible for *hadana.*

Related to *hadana* is *wilaya*, or guardianship. This is the right of the father and entails, for example, the right to take decisions over the education (*wilaya al-ta'limiyya*) and property (*wilaya al-mal*) of the child. If the father is unfit or absent, *wilaya* would be awarded to a mirror list of male relatives (Kulk 2013: p. 153-154). *Wilaya* consists of multiple parts, including guardianship over the property of the child and guardianship over the person of a child and his or her religious upbringing. A father can take both roles, a mother can only have the guardianship over the property of the child. Since 2008, the person having *hadana* also has the educational guardianship over a child (Lindbekk and Sonneveld forthcoming).

Non-custodial parents are entitled to visit their children once a week. If the parents cannot agree: [...]

> 'the judge shall make the arrangement in such a manner that [the visit] occurs in a place that does not cause emotional damage for either the minor boy or minor girl. The ruling on visiting the child should not be implemented compulsory [sic]. However, if the person who has custody over the minor child refuses to comply with the ruling without justification, the judge shall send him a warning. If he repeats this, it is permissibly [sic] for the judge to hand down a compulsory implemental ruling [sic] to the effect that custody be transferred temporarily to the person who succeeds him in the entitlement thereto for a period that he determines. (art. 20, law no. 100 of 1985, translation by (El-Alami 1994: p. 127-129).

> Visiting rights shall be not less than three (3) hours a week between the hours of nine in the morning and seven at night, taken into account as much as possible that this visitation is during the official holidays, and does not contradict with the regularity of the young child in his education (Galal 2011: p. 4).[2]

2 According to Abdel Hameed Galal, this was arranged in the 'decree of the Minister of Justice No.1087 for the year 2000 on places for seeing young Child' (Galal 2011, p. 4), see also (Lindbekk & Sonneveld, forthcoming).

In 2005, the right of mothers to *hadana* after divorce was extended to the age of 15, with a possible extension to 18 for boys and marriage for girls.[3] Since the 2011 revolution, this law has provoked much debate, drawing attention towards the issues of non-residential fathers. The 2005 and other amendments have been reframed as Suzanne's law, after the wife of the former Egyptian president Mubarak. Since Mubarak was forced to step down in February 2011, a small but highly vocal group of men has been campaigning against this legal reform (Lindbekk & Sonneveld, forthcoming). Protesters claim recent amendments in family law are un-Islamic and the product of western influences, referring to the classical *shari'a* custody ages of seven and nine. These claims are very similar to the debates surrounding the introduction of the *khul'* divorce in 2000 as described by Sonneveld (2009; 2012). Furthermore, fathers' rights activists claim fathers have to pay child maintenance, while revengeful mothers block access to their children. Protesters demand that visiting hours are extended and that children can be taken home by their fathers. Furthermore, paternal relatives should also have access to the children. Demands were made for the transfer of custody or even the imprisonment of mothers who do not comply with visitation arrangements. An Egyptian branch of British Father's Rights NGO *Fathers for Justice* has been established.[4] According to Lindbekk & Sonneveld, organisations such as *The Revolution of Men* and *The Network of Men Harmed by the Personal Status Laws* are promoting joint care by parents after divorce over a return to the former end of *hadana* at ages seven and nine. They relate this development of discourse to a sense of emasculation in an age where husbands can rarely meet the obligation to maintain their families. In reaction, a mother's rights group *the Mothers Custody Holders of Egypt* was established, arguing for keeping the status quo, as it would best fit children's welfare and demand that fathers take their providing role of paying maintenance seriously (Lindbekk & Sonneveld, forthcoming).

A divorced mother exercising *hadana* over children under 15 is entitled to child maintenance and compensation for child care. However, as the only form of no-fault divorce available for women is the khul` divorce, for which they must renounce their financial rights, many Egyptian women have to renounce at least some part of their own or even their children's maintenance rights to get a divorce. Moreover, many men do not actually pay their maintenance obligations (Bernard-Maugiron & Dupret 2008, p. 72; Al-Sharmani 2008, p. 44-48). Al-Sharmani found that Egyptian court cases on maintenance claims lasted for one to four years. Although temporary maintenance orders are possible during the procedure, only few women in Al-Sharmani's research had actually managed to get one. Moreover, all kinds of practical issues

3 This age used to be 10 for boys and 12 for girls, with a possible extension in the interest of the child to 15 for boys and marriage for girls. However, the custodian is not entitled to payment for custody during this extension (art. 20 law nr. 100 of 1985).

4 Divorced Fathers fight to see offspring, *The Egyptian Gazette*, 12 May 2011. Single fathers call for amending custody law, Safaa Abdoun, *Daily News Egypt* on 24 May 2011. Pamphlet of the Saving the Egyptian Family Movement retrieved from the tahrir documents website http://www.tahrirdocuments.org/2011/06/save-egyptian-families/, accessed 8 May 2013.

arose, for example in proving the former husbands means and claiming the money if a maintenance order was eventually given by the court (Al-Sharmani 2008, p. 44-48).

6.2.2 Morocco

In Morocco, children seem to be far less central to social and legal debates about divorce than in Egypt. Although according to the preamble, the new Moroccan *Moudawana* of 2004 was 'based upon shared responsibility, affection, equality, equity, amicable social relations and proper upbringing of children' (translation: HREA 2004), both public debates as well as legal reform mostly focus on the rights of divorcing women and men, including issues such as access to divorce and maintenance. Although children are relevant in these discussions, for example in discussions whether a mother can surrender her rights to child maintenance or even child custody in exchange for a divorce, they do not take central stage like in Egypt or the Netherlands. According to the preamble of the *Moudawana*, equality between women and men is an important objective of the new law. However, this does not mean that the gendered division of child care in *wilaya* and *hadana* has been abolished.

First of all, as before, mothers have the first right to *hadana*, or daily care and residence. After divorce, *hadana* is awarded 'first to the mother, then to the father, then to the maternal grandmother of the child' (article 171). During marriage, both parents have *hadana* over their children. *Hadana* used to end at age 15 for girls and age 12 for boys, after which the child could choose residence with one of the parents or another relative (article 102 old *Moudawana*, 1993). Since 2004, mothers keep *hadana* of their children until the age of legal majority (18) for both boys and girls, but from the age of 15 the child can choose residence with either parent (article 166 new *Moudawana*). One often-debated provision has seen only limited reform. If the mother remarries, she will lose *hadana* of children aged seven or older to their father, unless she also has *wilaya* over her children, or unless the transfer of hadana to the father is harmful for the child.[5] The father has to claim *hadana* within one year after he has knowledge of the marriage (articles 174-176 new *Moudawana*).

Wilaya, (translated by HREA as tutorship) is the right of the father, both during and after marriage. As article 236 states: 'By law, the father is the tutor of his children unless he is disqualified by judicial order. The mother may manage urgent affairs of her children in the event the father is prevented from doing so.' Legal tutorship entails the management of the child's affairs. This means that, generally speaking, only the father can make decisions on issues such as medical treatment or education. In Morocco, a father has a right to contact with the child, but 'the ward always spends the night at the custodian's house unless the judge decides otherwise' (art. 169 new

5 This could potentially make it possible for judges to take the best interest of the child as a point of departure in *hadana* after remarriage and make the transfer to the father less obvious. However, I have no information on how this article is interpreted or used in Moroccan legal practise. Furthermore, exceptions are made for specific circumstances such as a handicapped child, or if the mother marries a close relative of the children (art. 174-176 of the new *Moudawana*).

Moudawana. Translation: HREA 2004). Fathers are second in line for *hadana* and mothers for *wilaya*. Re-marriage has no effect on *wilaya*.

A father's duty to provide maintenance for his children continues after divorce. Legally, the mother is only obliged to provide for the children in case the father has no capacity to pay, or if she has renounced her rights to child maintenance in a *khul'* procedure.[6] The appropriate amounts of maintenance are determined by the court (Jordens-Cotran 2007, p. 318-319, p. 712-721). Moreover, after divorce, a mother can be entitled to compensation from the father for nursing and bringing up the children, as she cannot support herself properly while taking care of the children, which can be seen as a form of maintenance (Jordens-Cotran 2007, p. 734). In Morocco, the payment of maintenance for both spouses and children is an important matter. According to several Dutch-Moroccan and Moroccan lawyers I interviewed, in legal practice a father is not easily considered as having no capacity to maintain his children. Moreover, due to differences in standards of living between the Netherlands and Morocco, fathers living in the Netherlands, even those on Dutch social security will certainly not be considered as not having any capacity to pay maintenance in a Moroccan court case. The non-payment of maintenance is actually a criminal offence, with sanctions of a fine or even up to 12 months of imprisonment (Jordens-Cotran 2007, p. 708-709, p. 721). As one Dutch-Moroccan lawyer said: 'In Morocco, not paying maintenance is *crime number one*', and taken very seriously.[7] In transnational cases where men live outside of Morocco, women who should have been receiving maintenance for their children can also turn to the court to have their children's father registered at customs. When entering or leaving Morocco, fathers will be detained until they have paid the arrears.

This situation strongly privileges, but also burdens, mothers with regard to residence after divorce. Even though the rights of women have been reinforced in the new *Moudawana*, the norms of a gendered division of labour with regard to child care laid down in the family law have not been changed. In short, the new Moroccan *Moudawana* of 2004 has strengthened the central position of mothers after divorce, giving them the right (and burden) of *hadana* of children until the age of majority, although fathers can still try to claim *hadana* if mothers remarry. However, this strong position of mothers as sole custodians is limited by the father's right to *wilaya*, or taking fundamental decisions with regard to the child and his obligations for paying maintenance.

6.2.3 The Netherlands

In the Netherlands, children and child care are central to the public debates about divorce. In these debates, a welfare discourse is central. This is reflected in Dutch law, especially the '*Wet bevordering voortgezet ouderschap en zorgvuldige scheiding*' (law [for

6 However, since the new *Mudawwana* of 2004 women can easily choose another divorce form in which they do not need to renounce maintenance.

7 Interview, November 2011. English in original.

the] promotion of continued parenthood and careful divorce) of 2009. The preamble of this law explicitly states its aim as 'decreasing divorce and contact issues', emphasising that both parents remain responsible for raising the child.[8] In 1998, the term custody (*voogdij*) after divorce has been replaced by a continuation of shared parental authority as both a duty and a right of the parents during marriage and after divorce. Moreover, after divorce, a child of which the parents share parental authority has 'a right to an equal treatment in care and upbringing by both parents' (BW 1:247:4). Furthermore, the 2009 divorce law states that: 'parental authority entails the right and the *obligation* of the parent to care for and raise his minor child' (BW1:247.1). In the preamble, however, it becomes clear that this parental obligation is limited to have *contact* with his or her child, not to take an equal share in the actual day-to-day care work. To emphasise this shared responsibility for care, the term *omgangsregeling*, or contact arrangement, has been replaced by the term *zorgregeling*, or care arrangement, regardless of the actual time each parent spends with the child, ranging from a full co-parenting arrangement to a short visit every month.[9]

In the parliamentary documents and debates surrounding the 2009 law, it was considered to be in the best interests of a child that 'also after the divorce of its parents, [a child] has contact with both parents and that both parents keep taking joint responsibility for its care, upbringing and development'.[10] Or, more explicitly stated 'contact is in the best interests of the child', and there can, therefore, only be exceptions when contact is against the best interests of the child.[11] In all these laws and accompanying texts, strict gender-neutral wordings are used, emphasising the formal equality of both parents (cf. Terlouw 2010, p. 11-13).

To enforce contact orders when the resident parent does not comply, courts have taken several measures, such as imposing penalties, placing a child under the custody of the Youth Care Office and paradoxical allocation of parental authority.[12] This is a method used by some courts in cases of strong conflicts over contact between parents. In these cases, the non-resident parent – generally the father – is awarded sole parental authority over the children, although the residence of the children is not changed.[13] In at least one case, a mother has actually been criminally convicted for keeping her child away from the non-residential father. However, there have also been a few Dutch cases in which the court has given contact orders to non-resident fathers at the initiative of the mother, because of the importance for the child's welfare.[14]

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8 Memorie van toelichting, *Kamerstukken II* 2004/05, 30 145, nr. 3, p. 1. All translations from Dutch are by the author.

9 However, this provision is only for parents with shared parental authority. For contact with parents without parental authority the old term 'omgang' or contact is still in legal use (art. 1:377a BW).

10 Memorie van toelichting, *Kamerstukken II* 2004/05, 30 145, nr. 3, p. 1.

11 'Omgang is in het belang van het kind', *Kamerstukken II* 2004/05, 30 145, nr. 3, p. 7.

12 For example: Rechtbank Maastricht, 12 June 2007, *LJN* BA7155.

13 For example: Gerechtshof Amsterdam, 27 January 2005, *LJN* AS 6020; Gerechtshof Amsterdam, as cited in Hoge Raad, 7 July 2010, *LJN* BM4301.

14 For example: Rechtbank Breda, 3 March 2011, *LJN* BR1570, translated from Dutch; Rechtbank Roermond, 90815/KG ZA 08-274, 24 December 2008, *LJN* BG8982, translated from Dutch.

Similar to parental authority and contact, legal provisions with regard to child maintenance are also put down in gender-neutral wordings. During marriage and after divorce both parents are equally obliged to maintain their children. Generally, children live with one of their parents, mostly the mother, with the father paying his share of the child maintenance to the mother. The right to maintenance for children is determined by two factors, the need of the child and the financial capacity of both parents (art. 1.397 BW). The need of the children is also partly determined by the financial circumstances of the parents during the marriage, the general principle being that the child should keep the same standard of living as it was used to during the marriage. In legal practice, a quite detailed and complicated system has been developed by judges to calculate the appropriate amounts of child maintenance taking these factors into account, the so-called *tremanormen* (for an elaborate discussion see: Dijksterhuis 2008).[15] However, parents are not obliged to have a judge calculate the appropriate amount, they are free to negotiate among themselves (see also: Jonker 2011). For transnational marriages, the children's country of habitual residence is decisive in determining the applicable law on child maintenance, which means a Dutch judge would apply Moroccan law or Egyptian law when the children are resident in Morocco or Egypt respectively (Jordens-Cotran 2007, p. 749-752). If maintenance is not paid as determined by the court, the receiving partner (e.g. the mother) can call on the LBIO, the *Landelijk Bureau Inning Onderhoudsbijdragen.* This Dutch agency will help claim arrears in child maintenance payments and, since 2009, also in spousal maintenance payments. The LBIO has quite far-reaching possibilities to recover the arrears, even abroad. According to the LBIO, the number of cases in which they need to claim maintenance because payments are lagging behind is going up each year. In 2010, it was estimated that around three out of four court orders on maintenance ended up with the LBIO because of non-payment. Dijksterhuis and Vels have done research on why maintenance was not paid as ordered. They found that in only 22% of cases respondents gave financial issues as a reason. In about one third of cases the reason was conflicts with the former partner, for example on child contact or on the way maintenance was spent. Another third of respondents was unhappy about the amount of maintenance or the way it was calculated (Dijksterhuis & Vels 2011, p. 11).[16]

In most of these Dutch legal provisions on child care after divorce, the best interest of the child is the dominant frame of reference. Below I will further compare the three countries with regard to the use of this welfare discourse in law and public debates.

15 The system has been formalised to such an extent that there are even computer programs available to calculate the amount of maintenance (Jonker 2011), as well as an app (see https://itunes.apple.com/nl/app/alimentatie/id464054505?mt=8, accessed November 2013).

16 Unfortunately, this report uses gender blind terms, and does not differentiate between men and women but only between those who pay and those who receive maintenance.

6.2.4 The best interest of the child and the welfare discourse

All three countries explicitly refer to the concept of the (best) interests of the child in their family laws. Below, I will outline where each country references to the best interest of the child can be found, in actual law as well as public debates or propositions for legal reform. As stated above, of the three, the Netherlands has had the most extensive attention for the best interest of the child in law as well as political and public debates, while in the other two countries the concept is up-coming. The Netherlands will thus be overrepresented in this comparative analysis.

In Egypt, regulations with regard to *hadana* and *wilaya* mostly weigh the gender of the care-giver and child over actual care during the marriage or capacity to care for the children after divorce. Legally, the concept of the best interest of the child is of limited importance, mentioned only in Egyptian child custody law before 2004, when it is referred to as a factor for deciding if children above the usual age for ending *hadana* should continue to stay in the care of their mother (art. 20 law no. 100 1985. Translation: El-Alami 1994: p. 127). When discussing visitation arrangements, there is a reference to 'not causing emotional damage' to the child (art. 20 law no. 100 of 195. Translation: El-Alami 1994). Although the welfare discourse is relatively absent in Egyptian law, it has figured prominently in debates on child contact since 2011. When arguing for law reforms, fathers' rights groups use arguments quite similar to those in older European, including Dutch, debates, promoting contact between the non-resident fathers as being in the best interest of the children and demanding punishments for mothers who block this contact. The main arguments used in these debates were both children's welfare as well as the accordance with *shari`a* (Lindbekk and Sonneveld forthcoming).

In Morocco, the concept of best interest of the child has been newly introduced into the new *Moudawana* as a consideration for custody or guardianship, giving courts the authority to rule on such issues. Zoglin (2009) even considers the introduction of this concept in custody decisions to be one of the major innovations of this new family code (Zoglin 2009, p. 974). According to the preamble, 'Children's interests with respect to custody are also guaranteed by awarding custody to the mother, then to the father, then to the maternal grandmother' (preamble new *Moudawana*, translation: HREA 2004, p. 5). [17] The article now reads:

> Child custody shall be awarded first to the mother, then to the father, then to the maternal grandmother of the child. If this proves difficult, the court shall decide, in light of the evidence before it and in view of what would serve the interests of the child, to award custody to the most qualified of the child's relatives, while guaranteeing the child suitable lodging as one of the custody obligations. (article 171 new *Moudawana*. Translation: HREA 2004, p. 38)

17 The father was already put second in line at the *Moudawana* reforms of 1993

This article creates room for the court to take into account the best interests of the child and to deviate from the list, introducing possibilities for litigation on the basis of different interpretations of the best interests of the child.

In Dutch family law, the best interest of the child concept has been a dominant frame of reference for quite some time, taking centre stage in legal reform. For example, in the parliamentary debates leading to the introduction of the 2009 law, one of the MP stated: 'The [best] interests of the child will always be the first matter of importance for my parliamentary party'.[18] In the Netherlands, at first sight, the best interests of the child are described rather differently from the Moroccan or Egyptian legal preference for mothers as main caregivers, as strictly gender-neutral language is used. As some authors have pointed out, however, in many western countries gender-neutral terms and a focus on equality have been used by the fathers' rights movement to reinforce the position of non-resident fathers (see for example: Bertoia & Drakich 1993; Williams & Williams 1995; Wallbank 2007; Boyd 2004; Rhoades 2002). This can also be seen in Dutch parliamentary debates on the 2009 law reform, for example:

> A proportion of the children of divorced parents have no contact with one of their parents. In 2003, this percentage has fortunately gone down to 8%. But I add, that is 8% too much. My party welcomes this development from the perspective of the emotional development of the child. Children should be central in divorce. Also against the background of the equality between men and women it is important that this percentage goes down. We are coming from a paternalistic society in which children belong to the wife after divorce. Our goal should be to give mothers and fathers an equal role.[19]

> Article 247 of the Burgerlijk wetboek says that in these situations one parent should promote the relationship of the child with the other parent. That looks nice on paper, but in practice parents – mostly fathers but also grandparents – are often deprived of the right to see the child. How will the passing of this law actually improve these kinds of poignant situations? That's what we are doing all this for, after all.[20]

Both MPs use gender-neutral terms, and the first also refers to equal care, but it is clear that they are mostly hoping that the new law will encourage contact between non-resident fathers and their children with this new law. In the literature, similar analyses regarding gender equality and family law reform have been made. According to Williams and Williams (1995), for example, striving for gender equality with regard to child custody and contact after divorce while leaving out circumstances such as the

18 De Pater-van der Meer of the CDA (Christian Democratic Appeal), the largest coalition party at that time. *Handelingen II* (minutes of parliamentary debates), 27 March 2009, 51-2998. Translated from Dutch.

19 MP Pechtold of D66, the progressive liberal party. *Handelingen II* 21 March 2007, 51-3006. Translated from Dutch.

20 MP Bouchtibi of the PvdA (Labour Party, at that point the second largest party in government) *Handelingen II* 21 March 2007, 51-301.

division of day-to-day care during and after the marriage privileges fathers over mothers (Williams & Williams 1995). Boor has analysed the 1998 Dutch legal reform introducing shared parental authority after divorce. In her analysis, shared parental authority gives both parents the right, though not the obligation, to provide day-to-day care for their children. Taking into account that, during the marriage, it is mostly one parent, the mother, who cares for the children, this means that both parents have equal rights, but unequal obligations. This situation gives the – formerly – non-care giving partner, mostly the father, more choice after divorce: becoming actively involved in the day-to-day care for the children or letting the mother continue to do most of the care work. The care-giving parent, on the other hand, has little to choose from because the non-care giving partner cannot be obliged to take care of the children. Moreover, in conflict situations, shared parental authority can be abused to harm the care-giving partner by merely exercising the right to care for the children or to take decisions for them out of spite (Boor 1999, p. 34-35).

By promoting gender equality, in the sense of formal equality, fathers' rights groups in the Netherlands and – to a lesser extent – Egypt use an existing feminist discourse in a different way, described by some as backlash feminism (e.g. Boyd 2004). Especially in the Netherlands, arguments of gender equality, formerly used in enhancing women's rights in divorce are now used to enhance visiting rights. Dutch laws use strictly gender-neutral wording and make the child welfare discourse central, thus creating formal equality, while Morocco and Egypt have explicitly gendered laws. However, in all three countries, actual practice means that it is mostly mothers who provide day-to-day care, while fathers have limited contact arrangements and have the power to take, or participate in, major decisions. A focus on formal gender equality instead of substantive equality overlooks this important similarity between the three countries.

A remaining question is whether, and how, the welfare discourse that is apparent in the legal discourse in the three countries, impacts on the way in which parents talk about arranging child care after divorce. According to Kaganas and Day-Sclater, the welfare discourse has had certain effects on parents in contact disputes. This welfare discourse includes certain implicit images of good and bad parents, which are voiced in gender-neutral language in the law and in court, but are strongly gendered in practice. The good mother puts her own interest below that of her children and actively enables contact with the non-resident father (Kaganas & Day-Sclater 2004, p. 13). The bad mother obstructs that contact and uses her influence with the children to alienate them from their father, influencing them to refuse contact (Kaganas & Day-Sclater 2004, p. 20-21). Because of the crucial importance the welfare discourse attaches to contact between children and their fathers, the qualifications for being a 'good' father are not very burdensome. 'To warrant description as "bad", fathers must have behaved in exceptionally callous or irresponsible ways' (Kaganas & Day-Sclater 2004, p. 18) Because of the dominance of the welfare discourse, the mothers and fathers Kaganas and Day-Sclater interviewed were constantly struggling and negotiating to maintain themselves as good parents in relation to these implicit images of good fathers and mothers. Below, I will go further into the stories of the

parents in this research in the context of transnational divorce. Although most parents resolved their disputes outside of the court, images of good and bad parents were an important theme in their stories about arranging child care after divorce.

6.3 Parenthood after transnational divorce

Similar to the study of Kaganas and Day-Sclater, many parents in the interviews presented images of good and bad parents. Often these stories took a prominent place in the interview, especially if there had been conflicts, and they regularly came up without any questions or prompting. One Moroccan father I interviewed already started making his point about parenthood after divorce the minute after I entered his car, heading towards the home of his parents where the interview was agreed to take place. It was only after I noted these recurring stories of good and bad parents in the interviews that I started to read the theoretical literature about the welfare discourse, which provided a very useful frame of analysis for both the laws regarding child care after divorce as well as the interviews in this research.

It must be noted that analysing the interviews with divorced parents as stories in which they construct images of good and bad parents does not necessarily mean that these parents are consciously manipulating their narrative to make themselves look good or their former spouse look bad by talking about the best interest of their children. As has been said before, high-conflict cases involving domestic violence, child abduction or deceit may be overrepresented in this study. Analysing these interviews in terms of images is not meant to lessen the impact of these stories, as interviewees may very well be right if they claim their children have been harmed by the behaviour of their former spouse. But analysing their stories can reveal and clarify the underlying norms on good and bad parenting which also contain some specific transnational elements.

From the interviews in this research two stories emerge about 'bad parents', both during the marriage and after divorce. First of all there is the absent parent, who fails to meet the needs of his or her children. Secondly there is the parent who involves the children in the conflict with the other spouse or uses them to pressure the other parent. On the other hand, the 'good' parent is involved in child care both during the marriage and after divorce and takes the best interest of the child as a starting point. As mentioned before, many interviewees consider it necessary for children that both parents, or at least both a female and a male caregiver, are involved in the raising of a child.

6.3.1 Bad parent no. 1: The absent parent

The absent parent is a strongly negative image that comes up in several interviews, starting with stories about the marriage. Three mothers, for example, volunteered stories of being alone with a crying baby while their husband would not be disturbed:

> When he had a late shift, the little one should not cry at all. [he said:] 'Get your child and get out!' It was a small apartment. Not a place where I could go upstairs or downstairs. It was my child and not his child. 'It's your child, go to sleep!' I really was surprised and disappointed. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

> He was very concerned during the pregnancy and all, so that was ok. But once the child was there and I laid in bed more dead than alive, then things had to… [Son] was a fussy baby. It was just a terrible disaster, because he thought that the baby should not cry. But he also thought that I was better at it than he was, because if he walked around or whatever with the child it just kept screaming. So that was my job. [...] But right, I just gave birth, the child was five days old and I kept dragging it around. And it kept crying. He [husband] lay in bed like, well, that's arranged fine, and I had to… (Ingrid, Dutch woman with a Moroccan husband).

> Also when [name daughter] was born. The first year he slept in the attic. Because he did not want to wake up from her crying. So I had to get out of bed every night to take care of her. He said: 'well, I need to be on the road the next day, and I can't concentrate if the child keeps me awake half the night'. Well, have I been dragging those children around on my own to get them to be quiet. No, I raised the children all by myself. All those years till now. (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands)

The crying babies in these quotes were already adolescents or even adults at the time these interviews were held. Though the choice of examples given by these interviewees might have been related to my own position as a researcher – I carried out all of these three interviews either visibly pregnant or as a new mother – being 'left alone' at such a time obviously is taken as a strong token of being an absent and therefore 'bad' husband and father. In the last quote, Margriet used the phrase: 'I raised the children all by myself'. Other mothers have made the same remark. Elizabeth for example: 'He almost never came home anymore. He arrived at 11 pm, midnight. I raised the children by myself' (Dutch woman divorced from Egyptian husband, living in Egypt). In another interview, Halima said: 'I had to do everything on my own in the home. I had to stay inside all day and take care of my sister-in-law and my son. He was working all day' (Halima, Moroccan woman married to Dutch-Moroccan husband, living in the Netherlands).

A few of the interviewed parents included specific elements of transnational marriage in their story about absent and involved parents. For example:

> They have a father from abroad who taught them nothing. No Arabic, nothing. All they hear are nasty things. 'You're not allowed to'. Especially [daughter] she's allowed nothing. If she would have lived in Egypt she would have been allowed nothing at all. […] Then I tried to get an Arabic teacher into our house. But then he heard that there was quite a lot of beating going on. And anyway, if such a man came to our house he had to be there, and he did not have time for that. He could not leave his wife alone with such a man, no that's not possible. Well, and if he was here, for a few days, on Fridays he took [son] to the Mosque in [city]. But [son] did not know how to pray. He never taught him that. And it isn't my job to do that. Because I know

> how to pray. I even married as a Muslim. I know how to pray. But it wasn't my job to teach that to my children. But [ex-husband] thought so. Yes, you should teach your children that. Well, and then he left again and they just didn't want to. (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands).

In this quote Margriet blames her husband for being an absent father, leaving his wife and their children for long periods of time to do business abroad. He does not just fail the standard of being an involved father; he failed to be an involved *foreign* father. Margriet refused to teach their children how to pray, as she considered it to be the responsibility of her former husband. As an Egyptian father in a mixed marriage, he should have taught his children about his language and religion.

In another story, René, the Dutch father divorced from an Egyptian wife, who did not have contact with his children after his former wife took them abroad without his consent, explicitly countered his ex-wife telling this story of the absent father in court:

> [I told the judges] about how it went in the past, with the children. And that it was absolutely not true that I did nothing for the children. On the contrary, I did quite a lot, in spite of working elsewhere. I took care of swimming lessons, and on Wednesday, when I was there, I dragged them to all kinds of things. From creative things, sports, after-school child care, language lessons, doctors, those kinds of things. The dentist. And that I did a lot on weekends, that it wasn't true I did nothing, on the contrary. And that I could take care of them very well, no problem. (René, Dutch man divorced from Egyptian wife)

In the fragment quoted above, René counters the argument of his former wife that he should not be allowed a contact arrangement because he was a 'bad', absent father. He positions himself as being an involved, 'good' father by recounting the things he did for the children and his capacity to take care of them. As such, the stories recounted above are highly gendered. Interviewed mothers complained about their marriage, 'raising their children all alone', whereas fathers countered by showing their involvement in the upbringing of the children during the marriage. Interestingly, Amar, the one father who was the main caregiver only complained about the lack of involvement of his wife after she deserted him and the children. Only after this moment she became an absent mother, while mothers accusing their former husband of being absent all locate the start of this problem already during the marriage.

6.3.2 Bad parent no. 2: Using the children in the conflict with the former spouse

> He did it [the divorce] decently. Of course it was not easy for his male ego, but he picked it up nicely. No, in this respect, it could have been completely different. Threatening with the children, using them as a weapon against me… He never did that, and I did not do it to him either, of course. (Janneke, Dutch woman divorced from Egyptian husband, living in Egypt).

In this quote, praising her former husband for how he handled the divorce, Janneke refers to the second story of the 'bad parent' after divorce. This is the parent who uses the children in the conflict with the former spouse, acting in his or her own interest instead of that of the children. In the interviews, this story is reflected in several cases where there was a high level of conflict between the parents on the residence of the children, including two child abduction cases. The former spouse is accused of using the children in the conflict between the spouses. René, the Dutch man divorced from an Egyptian wife, speaks at length about how his former wife estranged their children from him and involved them in their dispute:

> She said things to me like 'me and the children are one'. That meant that I just shouldn't ask anything with regard to the children. She really sees it like that. Maybe that explains the fact that she involves the children in all the ugliness. And that they just have to play a role, like a kind of child soldiers. They are trained to deal with jobs for her. Well, the more I became aware of this, the harder it was for me to ask anything at all, because if I asked something, or if I did something, the children were given hell about it. (René, Dutch man divorced from Egyptian wife).

The mother of the children is pictured as a bad mother because she involves the children in conflicts between the parents, and even punishes them for what their father does. In contrast, René positions himself as a good father, i.e. a parent that puts the best interest of the children before his own en leaves them out of the conflict. Elsewhere in the interview he recounts:

> I have always, in any subject, taken the position that I do not want to get in a situation where she is pulling the children from one side and I on the other. [...] The last thing I want is for things to go through them. But that did not work out. If we had a fight, for example, I always wanted to just freeze it until we had absolute time for it, to talk about it quietly, away from the children, but she never wanted that. Fights were always solved on the spot, with a lot of shouting. When I had left the house, in these kind of situations, when she was screaming again – she did that during fights – well then I said; 'let's take it easy. Do not scream, be quiet, the children are upstairs.' And then she just shouted the children downstairs, to come and join us, etc. It was just unbelievable. (René, Dutch man divorced from Egyptian wife)

In this excerpt, René tries to protect his children by keeping them out of the conflict, as a good parent should do. He fails, however, because his ex-wife insists on involving them. The mother in the interview quoted above is the paradigm bad mother, putting her own interest above that of her children and keeping them away from their father. An Egyptian father also refereed to this image of good and bad parents when discussing his former partner's behaviour:

> Here [in the Netherlands] everything is more individual. Here, a woman can leave, breaking everything behind her, without showing consideration for others. It's always me, me, me. We do things differently. We don't put elderly parents in a nursing home. Here is egoism. That's

> also positive, not just negative. But unfortunately not humanitarian. [...] If the children are with me they always can go to her. Because of their pets. It's always allowed, she's their mother. At first they kept asking me for permission, slightly nervous. Now they just tell me. But if they're with her, it's much less. They're a little bit afraid of her. There's no contact [between interviewee and ex-wife], only a text message if necessary. (Latif, Egyptian man separated from Dutch partner, living in the Netherlands).

In this quote Latif also refers to the 'bad mother', who leaves a marriage and blocks the father's access to the children. He ethnicises this archetypical bad mother, by relating it to an individualistic and egoistic Dutch society. He goes on with an example to describe himself as a good father and his former partner as a less-than-good mother in this same welfare discourse. Even though they have a co-parenting arrangement, proposed by the mother, she blocks contact between him and the children in the time they spend with her. Latif himself always facilitates contact between the mother and the children, putting their interest above his own 'it's their mother'.

As has been discussed when describing the welfare discourse, these stories are generally highly gendered, with mothers blocking the access of fathers. However, in this research there are also cases in which mothers invoke this discourse against fathers. For example Karin, a Dutch mother divorced from an Egyptian husband recounts how her former husband decided to stop paying maintenance and change the residence of the children:

> Then suddenly I got an offer from [employer], to work. Then I got a whole different life. [...] But well, if there are holidays, they need to go to him [ex-husband]. He did not like that. And she [new partner] also did not like it. Until last summer. The school added another month to the holiday. And I told them; 'well, the children have to go to you.' Well, I did not get an answer. Nothing at all. But I knew he was home. So I called our taxidriver. Because I had to go to work, I could not leave the children on their own. And [taxidriver] brought them to him. Well, then he exploded. Then he said: 'you're not getting any money anymore. Nothing. The children stay with me. And I'll pay the rent for one more month, it's your problem.' [...] But it's simply all about the money. And it's like that with most Egyptians. I think if you hear most of those stories. It's absolutely only about the money. The amount of money they can take from you. Really, it's always a horror. It's about nothing else. It's horrible but it's true. Well, it's also how they are raised, right? (Karin, Dutch mother divorced from Egyptian husband, living in Egypt)

In this quote, Karin blames her former husband for changing the residence of the children, just for money instead of their best interest. He does not like taking care of them, nor does his new wife, and at first seems absent when she tries to appeal to him to solve the problem of child care during the prolonged holiday, even though he's at home. But changing their residence saved him a lot of maintenance and the costs of providing an apartment for his former wife and the children. Moreover, she ethnicises the conflict by relating it to the fact that he is Egyptian and thus all about the money. In this, she even seems to refer to the *Bezness*-frame of Egyptians trying to

take away your money. If so, this again illustrates the particular strength of this frame that it can even be used when discussing child maintenance paid by the Egyptian husband to his former Dutch wife.

Thus, in the stories of parents after transnational divorce the welfare discourse was reflected. To be a good parent is to make the best interest of the children central and above one's own interest. In these stories the best interest of the child is framed using two main criteria. First of all, both during the marriage and after divorce, both parents should be involved with the child. A few parents mention involvement specific to the transnational context, for example the transmission of 'foreign' skills, such as language or religion. Secondly, the child should not be involved in conflicts between the parents; ideally the parents arrange child care during and after divorce in harmony, or at least without the children's presence. These stories of good and bad parents were used by parents in various child care arrangements after divorce. I will now discuss in more detail how the parents in this research arranged for child care after divorce and how they used the welfare discourse in explaining these decisions.

6.4 Arranging child care after transnational divorce

After a transnational divorce, parents have to arrange how they will provide the necessary care for their children. I will now discuss the decisions parents have taken with regard to residence, contact, and child maintenance. Most parents in this research have made such arrangements outside of the court, privately negotiating with their former spouse or using forms of power to take one-sided decisions, although some parents have turned to the court for conflicts over child care after divorce.

6.4.1 Residence after divorce

Considering the differences in the legal context between Morocco, Egypt and the Netherlands, the arrangements parents made for the residence of their children after divorce are remarkably similar for former couples living in the three countries. In the research group, 17 out of 26 interviewees had children with their former spouse.[21] In most cases, the children had their main residence with one of the parents. In ten cases this was the mother; in five cases this was the father. That in one third of cases the children are residing with the father is rather remarkable considering the strong preference for residence with the mother in Moroccan and Egyptian law and general practice in Dutch society. In the Netherlands, between 2000 and 2007, in about 10% of the divorces, the children had their main residence with their father, whereas in a further 20% of divorces the children had their residence with both parents, travelling back and forth (CBS 2009: p. 21).

21 A further three interviewees had children from another relationship at the moment of the divorce. In all cases, these stayed with their own parent after the divorce.

In this research group only two, both Dutch-Egyptian former mixed couples arranged the care for their children in a shared-residence arrangement. In both cases, they arranged this among themselves. In Dutch, such an arrangement is called *co-ouderschap* or co-parenting. In the Netherlands, this residence arrangement is gaining popularity, and it is sometimes seen as an ideal type of continued parenting after divorce. However, in Egypt, where one of these couples lives, such an arrangement does not fit at all well with the legal provisions regarding *hadana* and *wilaya* and can be considered exceptional, especially since the arrangement started ten years ago, long before the debates of 2011. Still, the Dutch interviewee presents it as a very normal thing to do:

> He never made a fuss about it, we just did it together. We simply share custody. So I left [the marital home] in December, and from January onwards we just had the agreement; ok, two weeks at your place, two weeks at my place. But we never laid it down. It was just an agreement among ourselves. (Janneke, Dutch woman divorced from Egyptian husband, living in Egypt)

As we have seen, in Egypt, after divorce, it is the mother who has the right, and obligation, to *hadana*. Fathers have *wilaya*. However, Janneke is convinced that they share custody over their children, because they privately arranged it so.[22] In case conflicts arose, however, an Egyptian court would probably not support such a co-parenting arrangement.

Like this Dutch-Egyptian couple, in most transnational divorce cases in this research, the residence of children after divorce was arranged privately between the parents, without any legal procedures. This is in line with what Griffiths (1986) has written about divorce in the Netherlands, where conflicts on child custody or visitation are rare, and most conflicts after divorce concern issues of maintenance and division of property. Research done in Morocco by Mir-Hosseini (2000), and in Egypt by Sonneveld (2009) shows a similar picture. A central point in the stories of transnational couples is that these private arrangements were generally not the result of active bargaining 'in the shadow of the law' (Mnookin & Kornhauser 1979). Rather, the proposed arrangements were often implicit, for example:

> I: And the children came to live with you?
> R: Yes, then, at the moment of the divorce, they came with me. They also had enough of him. Both of them. At first they kept contact, but it broke off after a while. (Sofia, Egyptian woman divorced from Egyptian husband, living in the Netherlands).

> I: And did you arrange anything for the children or the division of property after your divorce?
> R: No, as I said, the eldest already left. He was almost 19, and the youngest turned 18 shortly afterwards. So he stayed with his father for a while. But we all live nearby, so we see each other

22 She uses the Dutch word *voogdij* or custody, the legal term used before 1998 which can still be heard regularly in everyday speech.

> regularly. [...] We did not make any formal arrangements, everything went in harmony. (Claudia, Dutch woman divorced from Moroccan husband, living in the Netherlands)

In these quotes the interviewees present their solution as natural and logical, regardless of whether it was the father or the mother who became the resident parent. In the second quote, the interviewee uses the term 'harmony', similar to the Dutch-Egyptian co-parenting couple. In the first quote, the divorce was not harmonious, but the residence of the children was not part of the conflict.

Only a few interviewees explicitly explained why they chose a certain care arrangement, even though there had been no discussion over the residence of their child. For example:

> R: [...] Well, basically he was there [at his father's house] every other week.
> I: You agreed about that from the beginning?
> R: Yes, because he worked on weekdays. He had to get up early and could not have a small child about the house.
> I: And did you then discuss that [name son] could live there?
> R: No, no. In any case I do not consider a man alone to be a good situation for a child, and I arranged everything properly with child care and things like that, so I just let it go.
> I: But would your ex-husband have wanted him to have lived with him?
> R: In theory he would have liked to, but how he would have dealt with everything practically he did not know yet, so, well... Of course, things like pre-school child care exist, but you need to make additional arrangements for that. Actually, he was all right with it. (Ingrid, Dutch woman divorced from Moroccan husband, living in the Netherlands)

Ingrid mentioned both practical reasons as well as ideological reasons. She thought small children should stay with their mother, or at least not with a single father. At the moment of the interview, the now adolescent child was living with his father, who had by then contracted a new marriage. There were a few more interviewees using this explicitly gendered discourse in which small children belong with their mother, similar to the Islamic family law concept of *hadana*. It can also be seen in the story of Amar, a Moroccan father. His wife had abandoned him and the children when she unexpectedly returned to the Netherlands after having an affair with one of his relatives. Because she had been the main breadwinner he was left with their children but without an income to support himself or the children. He then moved to live with his mother. He was quite unhappy with his situation. Even though when his wife had left them, and he had been the major caregiver during their marriage, in his opinion his wife still had more rights to have the children, because she is female. He was still hoping that one day his wife would return to him and the children, but if she did not do so, he would remarry:

> If she does not come back and I get my money from the Netherlands.[23] I would like a new wife for the children. And my own house. There has to be a woman for the children. Tomorrow my mother will die, and then what? (Amar, Moroccan man with Dutch wife, living in Morocco.)

In this quote, Amar specifically refers to his children needing a female care-taker. At the moment of the interview, his elderly mother took that role. If the children's mother will not return, he intends to provide another female care-taker by re-marrying. Regardless of being the main care-giver during the marriage, Amar would have preferred the usual arrangement, with the children living with their mother and him having the right to visit them one day a week: 'She is free. I have to take care of three children all day. [...] I should never have started a family. She wanted children, ok, and then we make children. Now I am left with them, always on my hands (Amar).' In this last quote, taking care of the children is more of a burden than of an asset, even though the father had already been the main care-taker during the marriage.

Amar represents a second situation in which there has been no discussion over the residence of the children; one of the parents taking and enforcing a unilateral decision. If one of the spouses left the marital home or even the country without making any arrangements for the children, the spouse that was abandoned has little choice but to continue taking care of the children. A rather similar story was told by Rabia. After several years of marriage her Dutch-Moroccan husband left for another European country to start a business there, intending to move the whole family when the business was successful. When his wife and children came to visit, however, they found out that he had found a new partner.

> Then I decided to stay here [in the Netherlands] after all and go on with my job. I had good employment, but I did have six children. It was a very tough job.
> I: Six children?
> R: Yes, it was his wish to have six children. But in the end I was left with them. [...] I had some patience, hoping that he would miss his children after all. And that he would come and visit us, but it did not happen. He did not call; he did not come to visit. He left everything behind him and forgot it all. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband)

Like the Moroccan man in the previous quote, Rabia refers to having children because her husband wanted to [have so many]. After divorce, these parents feel abandoned with their children. In both cases their partners initiated [the amount of] children and then ended the relationship without making arrangements about child care. By leaving their children behind with their former spouse and leaving the country, they left them little choice but to continue caring for the children. The Dutch mother

23 This interviewee was involved in a dispute concerning social security from his former Dutch employment.

who left Amar and their children behind in Morocco made use of the mobility connected to her Dutch nationality which ensured her husband and children could not follow her to the Netherlands.[24]

These issues of residence disputes involving national borders and, thus, migration and residence law are specific to transnational marriages. In other cases, parents have also made use of state borders and Dutch migration law to take one-sided decisions over their children's residence but in different ways. Some fathers had not abandoned their former spouse but kept living in the marital home while they made both their wife and the children leave the country. Other spouses took the children with them, leaving the other parent behind. I will now further discuss these issues of involuntary abandonment and parental child abduction below.

6.4.1.1 Residence disputes involving state borders: involuntary abandonment and parental child abduction[25]

A situation specific to migration marriages residing in the Netherlands is the involuntary abandonment of women and children in the country of origin.[26] In these cases women and children who have been living in the Netherlands are taken to Morocco, for example for visiting relatives or a family holiday. During their stay, the husband takes away the Dutch passports or residence papers and returns to the Netherlands alone, leaving his wife and children behind in Morocco (Bakker 2008; Bartels 2005). For example:

> Suddenly he said 'let's go on holiday, because last time was not pleasant at all.' [...] I did not bring enough clothes. He said I would not need them because we were only going for two weeks. I also did not bring enough clothes for our child. It was all just normal. He acted kindly, so I would not notice anything. We stayed with his family for a night and then he said I could spend a nice holiday with my own parents, and he with his parents. But after a few days he did not call. And he did not answer my calls. (Halima, Moroccan woman with Dutch-Moroccan husband).

In this quote, Halima blames her husband for deceiving her about going only on a short holiday, emphasising how she was asked to only to pack a small number of things, which was not just a problem for her, but also for their child, implicitly blaming her husband for neglecting to keep his child's interest in mind. As the story continues, the husband's family kept providing different excuses to account for his ab-

24 Legally, the children should have had Dutch nationality, as they had a Dutch mother. However, as explained in chapter 4, there were some problems with their situation and they did not yet have Dutch passports to travel with.

25 A more thorough discussion of the topic of international child abduction and transnational custody disputes can be found in the work of my colleague Jessica Carlisle.

26 In this study I will use the term involuntary abandonment in the country of origin (a translation of the Dutch *gedwongen achterlating/achtergelaten*) to describe a situation in which one of the spouses is left behind in Morocco/Egypt by their former spouse against their will – with or without the children – while the Dutch spouse keeps residence in the Netherlands. I will use the term abandoning when one of the spouses migrates him/her self, while his or her former partner stays in the marital home.

sence and reasons to prolong their visit. One day, she found out that her papers were missing. She went to report the loss of her papers to the police and the Dutch consulate in Morocco.

> That day he called me: 'I have the papers. It is none of your business why, I did it for you, you do not want to come to the Netherlands.' I asked him: 'what about our son?' He said: 'eat him!' (Halima, Moroccan woman with Dutch-Moroccan husband)

This story of involuntary abandonment in the country of origin contains an element of deception and discovery similar to those in the *Bezness* stories described in chapter 4. Halima finds out she has been deceived, and that what should have been a nice holiday in which the couple could reconcile their differences was in fact an intentional attempt to return her and her son to Morocco. Again, Halima points out that her former husband did not act in their child's best interest, and did not even seem to care about his son. By abandoning his wife and child in Morocco while returning to the Netherlands, this father did more or less the same as the parents who abandoned their spouse and children. However, instead of migrating himself, he made his wife and child leave their country of residence, the Netherlands and return to Morocco. Since 2004 considerable attention has been paid to the situation of such women who are involuntary left behind in Morocco. Several NGOs have lobbied to alter Dutch immigration policies to enable these women to return to the Netherlands, at least temporarily, to deal with their affairs in the Netherlands. Abandoned women can now report to the Dutch embassy in Rabat or to the Berkane office of NGO SSR, where they can get assistance to return to the Netherlands.[27]

Interestingly, in Elizabeth's case her Egyptian husband pressed her to return to the Netherlands with the children. She would be entitled to social security and child benefits over there, instead of relying on child maintenance by the former husband, and education would be much cheaper than in Egypt. This story strengthens her earlier claim that her husband cared mostly about the costs and not about the children. She refused to return to the Netherlands however, as she preferred to stay in Egypt where she had been living for a long time, even before her marriage. Instead, she claims her husband chose another means of limiting his spending on the children, by deciding to stop paying child maintenance and have the children reside with him during the week. This way, he no longer needed to provide Elizabeth with a place to live or child maintenance. As she could not afford to maintain the children on her own, she had to resign herself to this situation. The difference with the Moroccan-Dutch cases of involuntary abandonment in the country of origin is in the strict Dutch immigration policies and the mobility brought by Dutch nationality. It is far more difficult to return to the Netherlands on a Moroccan or Egyptian passport than it is to return to Egypt or Morocco on a Dutch passport. Elizabeth's former husband could not force her to return, nor would it have been useful to abandon her on a family holiday in the Netherlands, as she could easily return to Egypt on her own. It

27 I will further discuss the SSR and the Dutch embassy in chapter 8.

is this difference in nationality and migration laws, what Castles has called hierarchical citizenship (Castles 2005: p. 690), which provides certain transnational parents with the powerful means of involuntary abandonment in the country of origin without legal documents.

The opposite of leaving one parent behind to take care of the children is so-called international parental child abduction. This means one of the parents takes the child away from the usual place of residence and the other parent to another country, taking the child out of the reach of the other parent. In these cases, children and child care are seen less as a burden, and more as a benefit that can be stolen away.[28] In practice, the regulation of international child abduction means that parents in a transnational marriage who share custody legally cannot leave the country of residence without the permission of the other parent or a judge.

Although I have not asked questions about the subject of child abduction, it kept coming up in the interviews with professionals as well as some divorced spouses. For example, at the end of an interview, Claudia, a Dutch woman who had a harmonious divorce, brought up the subject of child abduction. 'Often it's only the most poignant cases [that get attention on television]. Pretending to go on holiday, a father takes the children with him. In fact, the children never return'. (Claudia, Dutch woman divorced from a Moroccan husband, having lived in both the Netherlands and Morocco). Margriet, another Dutch mother was very much afraid of her husband taking the children away to Egypt and therefore chose to postpone her divorce:

> Because I had witnessed that abduction of our close friends. I was pregnant with [Son] when it happened. They were twins. Oh, oh. I always thought about that when I wanted to divorce. [name Daughter] was four when I first thought about divorce. But I waited until they were grown-up. [...] Because I did not want the fuss, I did not want things to happen, like him abducting the children or something.' (Margriet, Dutch woman divorced from Egyptian husband).

Of the 26 interviews in this project, there were three cases which could actually be classified as parental child abduction, as one of the parents had taken the children away from the other parent, crossing national borders. A Dutch-Moroccan and an Egyptian mother both took their children away from the Netherlands and in one case a father took the child from Morocco to the Netherlands. Interestingly, both mothers did not take the children to their countries of origin, Morocco or Egypt, but to a third country of which they did not have the nationality. Unlike the parents that abandoned their spouse and children and broke off contact, parents whose children were taken away did not make that choice themselves. In all three cases, there was no,

28 Legally, child abduction has been arranged in the Hague Convention on the Civil Aspects of International Child Abduction of 1980 and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children of 1996. Morocco and the Netherlands are party to the Child Abduction Convention, Egypt is not. See for a thorough discussion of transnational child custody disputes: Carlisle, forthcoming.

or only very limited, contact between the abandoned parents and the children who had been taken away. In the other interviews as well, transnational elements played a role in the enabling or impeding of contact between non-resident parents and their children. I will now further discuss contact between non-resident parents and their children.

6.4.2 Contact with the non-resident parent

As most of the children stayed with one parent after divorce, contact with the other parent was no longer as self-evident as when parents and children were living in the same household. Sometimes, parents and children had no problems keeping contact:

> My youngest son went his own way, but he regularly came to me for dinner or to bring his laundry. From a distance, I have kept an eye on things for a few years afterwards. On Saturday, or at weekends, when there was time, I went there to do some housekeeping. That's how things developed. (Claudia, Dutch woman divorced from Moroccan husband, living in the Netherlands)

Claudia described no conflicts whatsoever surrounding her divorce, and the contact with the children, who stayed with her former husband, was never formalised. They regularly met in an informal way. She even continued to do the housekeeping for her former husband and children. Of the 18 divorce cases with children in this research, in nine cases there was no contact at all between the children and the other parent. Furthermore, in half of the cases in which there was contact, it was a source of dissatisfaction or conflict. In all but one of these no-contact cases, one of the parents had migrated to another country after the divorce, with or without the children. Although regular contact between parents and children after divorce is of course far easier when living in the same country, this does not mean that the transnational context is always the *cause* of severing contact between non-resident parents and children. For example, it might very well be that parents who take their children away to another country without informing the other parent would also have blocked contact while still living in the same country. René, the Dutch father whose children were taken away by their mother already lost contact with his children before their mother took them abroad. With the help of his former family-in-law, he managed to find out where his children now lived, and he kept trying to contact them:

> I have not seen the children since I left the house, in 2005. Except of course once in the *omgangshuis*.[29] [...]
>
> I: And do you have contact with them in another way, like phone calls or emails?

29 'Contact house', a special facility where non-residential parents can meet their children under supervision of social workers. Used in high conflict contact cases or, for example, when it is feared that the parent might harm one of the children or the residential parent, such as in cases of domestic violence, mental illness or addition.

> R: No, absolutely not, no. I did try. I send them post cards for their birthdays. Last time I sent a card and then I thought, on the birthday of my daughter, let's just look whether the phone number works. It had not been working for a long tome of course, but, you know, maybe I could suddenly, spontaneously, speak to them. So I checked the time, to make sure they would be home from school, and then I called. [...] And then I had [daughter] on the phone. And I said: congratulations, and so on, how are you, how old are you now, blah. And I thought: let's see if she will talk back. I waited, and it took a long while. Then I got an answer of only one word. I said something again, and again it took a long time before I got a one-word answer, and so on. Thus, I concluded that she just waited until she receives instructions about what she is allowed to say. It really took long before an answer came, I thought she was just reading what to say or something. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

When describing his attempts to get into contact with his children, this is one of many examples in which René describes his former spouse as blocking access and 'brainwashing the children'. In constructing his story, repeating these incidents, he interprets his daughter's silence as a consequence of her mother's behaviour and instructions. Here, his story shows some remarkable similarities to the stories of 'parental alienation syndrome' as discussed by Kaganas and Day-Sclater (2004), to which this father also refers in the interview. This framing of the contact issue enables fathers to blame the mother for their children's refusal to see them, enabling him to maintain the image of a good father while continuing to fight court cases to gain access to their children (Kaganas & Day-Sclater 2004, p. 20-22).

In transnational marriages, such a lack of contact between non-residential parents and children can also have consequences for the residence status of a foreign spouse. Taking into account Dutch residence law and immigration procedures, residence and contact can be closely linked in the Netherlands. If a divorce takes place while the Moroccan or Egyptian spouse is still on a dependent residence permit, without having spent enough time living in the Netherlands to be allowed to stay independently, this might mean that he or she has to leave the country.[30] Having a visitation arrangement with a child living in the Netherlands can be grounds for a residence permit, but this is not easily achieved (De Hart 2003, p. 110; Claassen 1986). In one case in this research, Farid, a Moroccan father, did not have access to his child because of Dutch migration procedures, losing his dependent residence permit after his former wife arranged a court order to block contact. His forced return migration abruptly ended the existing informal contact arrangement (Farid, Moroccan man divorced from Dutch wife).

On the other hand, several parents whose children resided with them complained that the other parent of the children did not keep in contact:

30 For the cases in this research this was generally after three years of marriage, since 2012 it has become five years.

> The children are fed up with it. My daughter keeps asking 'is that my mother?' about women she meets. My eldest son is very angry with his mother. I tell the children that their mother will not come back. I do not want to give them false hope. I never get a reaction to my emails. They are your children, please contact them, they want to see you! But we never saw anything. (Amar, Moroccan man with Dutch wife, living in Morocco)

> She [daughter] does not even want to go with him [the father]. He hurt her a lot. He thinks that life is only money or whatever, but he does not know that his daughter needs her father. She sometimes talks about her friends in school. Their fathers hold them on their laps or cuddle them. She does not have that. [...] She tells me: 'mama, I am afraid that, in the future, you may also get married and leave me behind all alone'. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

> And when my son calls his father, his father says: 'we will see each other on Saturday'. But many Saturdays go by and he does not come. He has not seen his father in five months. (Majda, Moroccan woman with Dutch-Moroccan husband, living in Morocco)

These parents also frame their stories in the welfare discourse. Speaking from the perspective of their children, they blame their former spouse for not being present when their children need them. Although in the cases of the last two quotes there actually was contact between both parent and children, it did not run smoothly and the mothers still felt that their ex-spouses failed their children by disappointing them and not meeting their children's needs before their own. Conflicts about child contact were regularly accompanied by conflicts about child maintenance. In these conflicts, similar reproaches about non-resident fathers not meeting the needs of their children were made. I will discuss this further below.

6.4.3 Child maintenance

Apart from residence and contact with a non-resident parent, finances are also a part of child care after divorce. In total, 11 respondents reported that some form of maintenance had been determined or agreed upon, seven in the Netherlands, two in Egypt and two in Morocco. In half of the cases, this was the result of a court decision, while in the others it was arranged privately. When it was arranged privately, most couples did not mention a lot of explicit bargaining when determining the amount. Similar to child residence agreements, this either was described as natural or as the result of one-sided decisions forced by one of the parents. For example:

> I: Did you also just arrange an amount for maintenance or did the judge do that?
> R: I said 125 *gulden*, and he did not object. We even forced it up a bit. Because you could only deduct [the maintenance paid] from the taxes from 150 gulden. So he paid me a little bit more officially, and then I returned it underhandedly. Back then I still received tax rebates, so we tried to arrange everything as neatly as possible. At least, as advantageous as possible. (Ingrid, Dutch woman divorced from Moroccan husband, living in the Netherlands)

This couple had made private arrangements without consulting a judge or a lawyer on the matter. Ingrid even helped the husband to gain tax advantages for maintenance. In another example, Janneke, the Dutch woman who had a co-parenting arrangement with her Egyptian ex-husband suggested to split the costs of private schooling for children instead of paying maintenance:

> I don't receive any maintenance from him. At first I said: all right, whatever you were planning to pay me as maintenance you can consider my contribution to the tuition fees. Because I consider school to be incredibly important. (Janneke, Dutch woman divorced from Egyptian husband, living in Egypt)

Janneke describes herself as giving away the spousal maintenance she feels she would be entitled to.[31] She does not mention a specific amount; instead she refers to the amount her husband would have been willing to give her. As she had her own income, she preferred to have her husband invest extra money into the schooling of the children. As the costs of private education became higher and higher and the father considered transferring the children to public school she decided to pay half the school fees, while mentioning that she knew that she was not obliged to do so legally.

In a few cases, the amount of maintenance was decided one-sidedly by the paying father, for example:

> Here in Morocco they have a law that he has to give a small amount for his daughter. And how much did he leave for her? 120 euro. Per month.
> I: Well, that's not much.
> R: What's that for such a small child? She pays 70 euro per month for school. A private school. What's left to live by? He arranged all that. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

Jamila considers the amount of maintenance paid by her husband to their daughter to be unfair, as it is their only source of income and they cannot both live by such a limited amount. In her story, her husband arranged their divorce without her knowledge. Using corruption, he managed to get to pay only a minimal amount, leaving his former wife no further options to defend her own or her daughter's financial interests in court or in private negotiations.

Instead of giving money to Jamila if their daughter needed something, he bought it for her, but only after the interviewee pressed him to do so. The child maintenance paid thus does contribute to schooling, but not to basic needs like food and housing. Moreover, because Jamila needs to ask each time, and only receives goods instead of money which can be spent freely, the dependency on maintenance also worked as a

31 This assumption is incorrect. For a more elaborate discussion of spousal maintenance rights see chapter 7.

kind of control. She feels like she should be careful around her former husband, in order not to upset him and endanger her child's schooling.

For other respondents in this research, maintenance was also often a source of conflict. There were only two cases in which the maintenance payments were actually made as agreed upon or ordered by the court. For some of the interviewed mothers, this was a serious problem, forcing them to look for additional sources of income or support. The issue of maintenance can also be symbolic for larger conflicts. Two interviewed men stopped or delayed maintenance payments because of other conflicts with their former spouse over their children:

> R: Because I refuse to pay, as my children have been abducted. It's a matter of principle. Moreover, the fact that she has taken away the children completely from me, well, then she also has to take complete responsibility. Moreover, she has the means to do so, so it's not like the children lack anything. Now it's like, if I would pay child maintenance, it's just a bonus for her. Considering the pay she gets. So I just refuse [to pay]. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

René stopped the child maintenance payments after he had reported that his children were missing to the police. The lawyer of his ex-wife reacted by calling in the LBIO to claim the maintenance awarded by the court. After a long struggle he managed to convince them of his views. He considers it to be unfair that he should still pay child maintenance to his former wife when she has taken the children from him. Moreover, he claims that his wife has more than sufficient means to support the children herself, so that they will not suffer if he does not pay. With this statement he counters the welfare discourse argument that he pays maintenance for the interest and upkeep of his children, regardless of the behaviour of his former wife or his contact with the children. This is also implied in the popular Dutch statement '*alimentatie is geen kijkgeld*', meaning that maintenance and contact between children and non-resident parents should be unrelated and the interest of the children should be central.[32] Similarly, another husband also refused to pay maintenance until his other demands regarding the children were met.

> She doesn't get a penny from me. She won't consent to passports for the children, for a holiday to Egypt. She would only cooperate once I pay all the overdue maintenance. 350 euro a month, that's 10,000 euro in all. But maintenance was only item number six [on their agreement]. I wanted to arrange all other points first. 1. Custody. 2. Last name. [...] I'll only pay once the passports are here. But when [daughter] was in hospital, I was informed. I really appreciated that. If there is normal contact [between interviewee and ex-wife] I'm willing to do

32 A popular saying in Dutch media and online discussion forums, which even sometimes appears in court documents, for example *LJN* BX0572, Rechtbank Dordrecht, 2012. In this case a private agreement detailing that the children would not have contact with their father if he did not pay the agreed maintenance was considered by the court to be conflicting with public policy.

> something extra. (Latif, Egyptian man separated from Dutch partner, living in the Netherlands)

Even though Latif has a co-parenting arrangement with his former Dutch partner, he has an on-going struggle over the last name and parental authority over their children. When they separated both parents bargained over an agreement, and Latif refuses to pay maintenance as long as those demands he considers most important have not been met, using the money as a bargaining tool while his former wife uses her control over the passports of the children. While both spouses could go to court over these issues, they avoided doing so. When describing child maintenance, Latif does not refer to the welfare discourse or the best interest of the child. Instead, he introduces the contact and communication with his former partner as a factor, mentioning his appreciation of her texting him when their daughter was admitted to hospital. If their relationship could improve, he would consider doing 'something extra'. Again, this demonstrates how Latif sees maintenance payments as a payment to his former partner, unrelated to his children's welfare but related to their relationship and contact, and as a gift instead of an obligation. While Latif and his former partner, like most respondents, resolved their conflicts out of court, a minority started court cases over issues related to their children such as child maintenance, residence or contact. I will go further into these procedures below.

6.4.4 Legal procedures on child care

Only a minority of the spouses in this research went to court over issues related to child care after divorce. Of all issues regarding child care after divorce, child maintenance is the one most often decided in courts, even when other issues, such as child residence or contact are arranged privately.[33] Although some of the interviewees were quite unhappy about the arrangements for child care after their divorce, only in a few cases there had been actual court cases regarding custody, visitation or residence, including in all three child abduction cases and in the case of the Moroccan father Farid, in which child contact and residence in the Netherlands were related. Remarkably, all three fathers involved in court procedures demanded contact, whereas the one mother involved wanted residence. This pattern is clearly gendered and probably related to earlier care arrangements during the marriage. None of the respondents explicitly used gender as an argument in their court case however.

All respondents started court cases relating to child care in the country where they lived, which was not necessarily the country of residence of their former spouse or children. René, for example, did not consider starting a court case in Egypt, even though his former wife and children had been staying there for some time before she took them to another country:

33 In the Netherlands this can even be done if the couple agrees on the sum that needs to be paid. Such a court order provides easier access to the LBIO in case of future non-payment.

> I: Did you ever consider starting a court case in Egypt?
> R: No, absolutely not. I think the legal system in Egypt is really horrible. Far worse than in the Netherlands. And the lawyers are even worse. Then you're so vulnerable for, say, dirty play, corruption, those kinds of things. I absolutely don't want to expose myself to that. Nor the children. The stories I hear [laughs]. It's just unbelievable. I think that, if you've got the cash and you're aggressive, meaning you're going for it, entirely, well, then you can gain a lot over there. The results are very unpredictable. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

Through his experiences, René has lost some of his trust in the Dutch legal system, but he also developed competence in handling it, developing a perspective of situational justice. His perspective on the Egyptian legal system is also one of situational justice, but far more negative and distrusting, informed by his experiences with corruption in Egypt, of which he told some anecdotes during the interview. In that legal system, where he has no competence, the outcome seems completely uncertain and out of his reach. In contrast, another Dutch respondent, living in Egypt, displayed strong confidence in the Egyptian court:

> R: But he's not allowed to take the children. Not at the age of seven. According to the law, they should just be with me. My daughter now can choose. She will appear before the Judge and he will ask: do you want to live with your father or with your mother? Well, they're both fed up with being with their father during the week. During the weekend they're with me. It's always tears when they leave. But he just knows I haven't got the money to take a Judge. (Anna, Dutch woman divorced from Egyptian husband, living in Egypt)

Anna cannot afford to start a legal procedure ('take a judge'), but fully trusts that an Egyptian judge will award her the custody over her children once she starts a procedure, showing a strong adherence to what Merry calls an ideology of formal justice (Merry 1986: p. 257). Anna does not seem to be aware of the legal reform of 2005, which grants women the right to *hadana* for children up to 15 years of age; while her children were 14 and seven at the time of the interview. As her divorce in Egypt was an administrative one, she has not yet had any actual contact with the Egyptian legal system. Later in the interview, she abandoned the financial argument, and emphasised the welfare argument even more strongly:

> I can get a free lawyer, through my employer. A colleague told me she can arrange that. But she also said; 'to remember that you will get turned inside out completely, the things your children have to go through'. I just don't want that. At some point he will have just have to come to his senses and just understand what he is doing! (Anna, Dutch woman divorced from a Egyptian husband).

In this second quote, she mentions a possible solution for the costs of the court case, but, arguing from the interest of the children she still decides not to go to court.

René, being involved in multiple court cases including allegations of child abduction, also invokes the welfare discourse when describing his decisions to start court cases.

> I told her that, in principle, I might even allow her to take the children abroad, if she really wanted to, but then I would have wanted an arrangement for the holidays and the like. But she just did not want that either. (René, Dutch father divorced from Egyptian mother, living in the Netherlands).

In this quote, he demonstrates his willingness to cooperate with his former wife, as long as he can keep contact with the children. However, as the legal dispute developed he changed his position. He no longer just wanted contact, but also demanded sole parental authority and residence:

> There is still this case I started earlier. At the court of first instance. In fact, the point of this case is that I demand both custody and residence. And the reason is that I think that she, what she does and has done, that that's harmful. And I don't think it will just stop. And I also don't think that it's something, everything that happens now, is something that stands alone. So I don't expect the children to be suddenly safe and ok all from now on. (René)

As can be seen from these quotes, René at first just wanted a contact arrangement. During the dispute, the mother decided to take the children abroad without his permission and without informing him of their location. As the dispute developed he shifted his demand to full custody and residence. In the four-hour long interview, he did not offer extended reasons for wanting contact, taking that wish as natural. But he does explain quite extensively why he demanded sole parental authority and residence. His arguments were put almost exclusively in a welfare discourse, focussing on the best interests of the children. He talked at length about why the behaviour of the mother was harmful for the children, presenting her as the ultimate bad mother, putting her own interests before those of her children and obstructing contact. This picture of the bad mother is remarkably similar to what Kaganas and Day-Sclater write about the UK welfare discourse and contact disputes, obstructing contact and using her influence with the children to alienate them from their father, influencing them to refuse contact (Kaganas & Day-Sclater 2004, p. 20-21).

6.5 Conclusions

In this chapter I discussed the topical issue of child care after divorce. I started by describing the legal and social context of child care after divorce in the three countries. Although there are significant differences in the legal provisions, some of the discussions taking place are remarkably similar. Especially the welfare discourse has been dominant for a long time in Dutch law, and it is developing in Egypt and, to a lesser extent, in Moroccan legal discussions. This discourse is highly gendered, using existing frames promoted by women's rights activists to enhance the position of

women, voiced in gender-neutral terms, to promote the position of men, especially non-resident fathers.

In the research group, arrangements for child care after divorce generally took place outside of the courts. Even though some parents were quite unhappy about the way things were organised, this did not mean they would start a court procedure. Arranging child maintenance, child residence or contact with the non-resident parents was generally not decided in explicit bargaining. Instead, it was either taken for granted, or one of the parents took matters in his or her own hands. In taking decisions unilaterally, some Dutch parents managed make use of the easier mobility connected to their Dutch nationality as a powerful tool in deciding the residence of their children.

Only in half of the cases in this research is there any contact between the non-resident parent and the children. On the one hand, there are residential parents complaining that the non-residential parent fails to keep [enough] contact with the children. On the other hand, there are non-residential parents complaining that their former spouse blocks access to the children. According to Rhoades (2002), who described and analysed the welfare discourse for Australia: 'A constant theme of these stories, in which gender is a central issue, is 'the power of women to deny contact'. The underpinning assumption is of unidirectional power reposed in the resident parent/mother who controls access to the children and can alienate their affections. The mother's resistance to contact is invariably unreasonable, a function of her contempt for the father and/or her sense of 'ownership' of the children, rather than an exercise of care' (Rhoades 2002, p. 73-74).

This reflects two main stories about good and bad parents after transnational divorce. These are remarkably similar to the welfare discourse which also influenced family law in all three countries, centring on the best interests of the child. Firstly, involved good parents share the burden of child care, whereas the bad parent is absent, during the marriage or deserts his or her children after divorce. Secondly, the good parent puts the best interests of the children before his or her own and does not involve the children in the conflict with the former spouse. The bad parent, on the other hand, uses the children in ongoing conflicts. Both fail to put the best interests of the children before his or her own, which makes them fail to be 'good parents'.

Although the child welfare discourse seems to be nearly universal, present in all three countries and in all interviews with parents, there are some specific transnational elements. First of all, in a transnational setting, contact between children and non-resident parents can be complicated by state borders and travel distance. Migration law can be a powerful tool for parents in transnational divorce, including issues such as international child abduction and involuntary abandonment in the country of origin. Secondly, stories of deceit and *Bezness* sometimes inform the perspectives of parents. Thirdly, some of the stories also contain elements of cultural difference. Being a 'good transnational parent' in some stories by spouses from mixed marriages entailed the transfer of culturally specific skills. Some conflicts on child care were also

explained by referring to a difference in culture. Spouses in migration marriages did not refer to cultural differences when discussing child care after divorce.

The welfare discourse can be qualified as what Merry calls a moral discourse, focusing on guilt and obligations in relationships, not legal rights or laws (Merry 1990, p. 112). In the interviews, there are very few references to law when discussing child care after divorce, and most parents make arrangements outside of the court. The main question of this chapter was: how the couples in this research arranged child care after divorce and how parents relate these arrangements to the laws and ideologies of the different legal systems, including the welfare discourse. At first sight, the law does not seem to be a very important factor in the arrangement of child care after divorce. However, this analysis is complicated by the fact that this welfare discourse is also important in recent – attempts for – legal reform in Morocco and Egypt and has for some time been the central ideology in the Dutch legal system with regard to child care after divorce. Thus, instead of parents referring to legal principles, there rather seems to be a widely shared moral discourse in which the best interest of the child is the most important principle regarding child care after divorce for both parents and the law.

Chapter 7. Financial aspects of divorce

7.1 Introduction

Apart from legally arranging the relationship between spouses and their children, marriage and divorce are also – maybe even foremost – financial matters, entailing rights and obligations for the spouses as well as the household property. Laws concerning the financial consequences of marriage and divorce contain certain ideas about the household and the family as an economic unit. In this chapter, I will demonstrate how Dutch, Moroccan and Egyptian family law regarding the financial effects of marriage and divorce are based on the same ideas and assumptions about the family in gender-based roles of home-maker and breadwinner. However, the legal systems provide different solutions for arranging the financial consequences of this gender-based division of labour. For transnational couples, these differences in actual law can have certain consequences, and also provide options for strategic behaviour. The main question of this chapter is therefore how spouses handle the financial aspects of divorce and how this relates to law in the different legal systems.

This chapter will start with an outline of the legal specifics of marital property regimes and maintenance obligations during and after the marriage in Egypt, Morocco and the Netherlands. Next, I present an analysis of legal and moral discourses about financial arrangements in transnational marriage and divorce, based on the interviews. Then I will compare legal provisions in all three countries and interview results on two main topics. First I will address the possibilities for marriage contracts and prenuptial agreements in a transnational context; how and why the participants in this research have arranged their marriage contracts; and how these arrangements turned out at the moment of divorce. Second, I will discuss maintenance and marital property arrangements after transnational divorce, paying special attention to the gender roles inscribed in the legal systems and their effects on transnational marriages.

7.2 Marriage as a financial contract – legal rights and obligations of marriage

Getting married has consequences for the financial position of spouses, for example with regard to maintenance obligations between the spouses during, and to some extent after, the marriage. While the actual provisions differ between the three countries, all have some possibilities for marrying couples to deviate from them. Below, I will outline the financial aspects of laws regarding marriage and divorce in Egypt, Morocco and the Netherlands and then compare the consequences and possibilities for transnational families.

7.2.1 Egypt

In Egypt, at the moment of marriage a marriage contract is signed, in which it is possible to include different kinds of stipulations. The marriage can be dissolved if these conditions are not met, providing an easier divorce procedure. Although both men and women can include certain conditions in the marriage contract, most of these stipulations are included for the wife's benefit, as men can easily dissolve the marriage anyway. A couple can choose, for example, to include stipulations that enable the wife to work, travel or finish her education.[1] Another possible provision is *isma*, giving the wife equal rights to divorce (revocable or not), without having to go to court (Welchman 2004, p. 71; Singerman 2005, p. 173). According to Welchman: 'The basic principle is that the stipulations may not make what is prohibited lawful nor what is lawful prohibited' (Welchman 2004: p. 71).[2] However, the aforementioned stipulations are controversial and only used by a small minority. According to Singerman, the vast majority of Egyptian men, and especially their families, would never accept a marriage contract with such stipulations (Singerman 2005, p. 173). To make a marriage contract valid, a *mahr* needs to be included. The *mahr* consists of two parts, a prompt and a deferred dower. According to Jansen, the level of the deferred dower is often set with the risk of divorce in mind (Jansen 1997, 2005). The prompt dower is paid at the moment of marriage, while the deferred dower needs to be paid by the husband in case of divorce or death. According to Sonneveld, the *shabka* – an engagement gift often in the form of gold – is taking over the place of the prompt *mahr*, which is often only a symbolic amount, and on which Egyptians believe taxes need to be paid (Sonneveld 2009, p. 111-117).[3]

In classical Islamic family law, a wife has a right to be maintained by her husband during the marriage, regardless of her own means (Welchman 2004, p. 33). In return for this right of maintenance the wife must be obedient to her husband. If the wife is disobedient, *nashiza*, she loses her right to maintenance (Jordens-Cotran 2007, p. 693-695). Even though the content of obedience has been limited over time, maintenance in Egyptian family law is to some extent still linked to the wife's obedience, albeit not as completely as before. In order to be entitled to maintenance, the wife must be obedient to her husband during the marriage. In legal practice, obedience means that the wife stays in the conjugal home. If she leaves the house without the permission of the husband, he can file a *ta'a* claim at the court demanding that his wife returns to the 'house of obedience', the matrimonial home or lose her right to maintenance (Welchman 2004, p. 88). According to Cuno, for some time in Egypt it has been possible to have such obedience orders to return to the marital home enforced by the police, a legal innovation in a law from 1897. However, this never be-

1 These last stipulations are controversial among many women's groups and activists because they believe women already have these rights (Singerman 2005, p. 173; Welchman 2004, p. 71). For discussions over the Egyptian marriage contract see also: Sonbol 2005; Shaham 1999; Hatem 2004.

2 This means for example that the wife cannot stipulate that her husband will not divorce her, and that the husband cannot demand that his wife will not have children.

3 For a further discussion on the meaning of gold and gifts at marriage in Algeria see: Jansen 1997.

came common practice, and the involvement of the police in *ta'a* claims was curtailed in 1967 and abolished in 1979 (Cuno 2009, p. 11-18). A *ta'a* claim generally means that the marriage is over. Sonneveld describes *Ta'a*, *khul'*, and maintenance claims as parts of a complicated strategic exchange in the courts between the two partners which will often lead to divorce (Sonneveld 2009, p. 170-176). Husbands have no rights to maintenance from their wives, regardless of their wealth.

After divorce, the entitlement to spousal maintenance stops after the *'idda*, or waiting period.[4] Apart from spousal maintenance, a wife might also be entitled to the deferred *mahr*, a *mut'a* or compensation and – if she has children under 15 – to child maintenance and compensation for child care. In practice, not all divorced Egyptian women actually receive these amounts, first of all, as the only form of no-fault divorce available for women in Egypt is the *khul'* divorce in which they must renounce these financial rights.[5] Moreover, many men do not actually pay their maintenance obligations (Bernard-Maugiron & Dupret 2008, p. 72-73; Al-Sharmani 2008, p. 44-48).

During the marriage, the property of the spouses remains separated. However, I have not been able to find the actual laws on this topic. It appears that this section of law has not actually been written down in the Egyptian code of personal status.[6] This means that, if a husband has paid employment, most property, including the marital home, will be his, whereas the wife owns her dower (both prompt and deferred), the *shabka*, or engagement gifts and the household goods and other property she brought into the marriage.[7] However, if it is the wife demanding divorce in a *khul'* case, she will need to return the prompt dower to her husband and, according to Sonneveld, regularly also other benefits received such as the *shabka*. Sonneveld has even found some indications that judges in *khul'* cases might actually be demanding that the wife 'returns' the property she herself brought into the marriage, recorded in the *ayma*, to her husband before awarding a *khul'* divorce (see: Sonneveld 2009, p. 118-119).

7.2.2 Morocco

In Morocco, marriage contracts are also signed at the moment of marriage. Like in Egypt, these conditions are mostly of an interpersonal nature, meant to improve the position of the wife. It is therefore the wife who has the right to petition for divorce on the ground of harm if one of the conditions is not met. Permissible stipulations are for example that the couple will not move abroad or live with in-laws or that the wife can keep her own business. Giving the wife a right to divorce equal to the hus-

4 For a more elaborate discussion of *'idda* and *mut'a*, see chapter 3.

5 Although legally, women cannot renounce their children's maintenance, as art. 20 of the 2000 law states that children's rights will not be effected by the *khul'* divorce.

6 Not all sections of Egyptian family law have actually been codified. When not codified, judges should resort to the teachings of the Hanafi school of law. See for a more elaborate discussion: Kulk 2013.

7 Or at least, those goods which have been written down in the *ayma*, which may include some possessions which have been brought into the marriage by the husband (Sonneveld 2012).

band, called *tamlik* in Morocco, is also possible. It is, however, not possible to deviate from the legal obligations of maintenance (Jordens-Cotran 2007, p. 142- 152). However, like in Egypt, this possibility to include stipulations in the marriage contract seems to be rarely used. In research done in the early 1990s in Rabat, only 36 out of 1,503 marriage contracts were found to include stipulations, mostly a stipulation that the wife had the right to work outside of the house (Bouman 1992). In the *Moudawana* of 2004, new possibilities have been introduced to include arrangements on the division of property in the marriage contract. At the moment of marriage the *adoul*, or notary performing the marriage, needs to inform the couple that they have the right to attach an arrangement on the division of property in an appendix to the marriage contract (art. 49 new *Moudawana*). To make a marriage contract valid, a *mahr* needs to be included, although it is not obligatory to specify the amount paid (art. 27 New *Moudawana*, see also: Jordens-Cotran 2007, p. 126-135; Kulk 2013).

In Morocco, a wife is entitled to maintenance from her husband. Before 2004, in exchange, Moroccan wives were legally obliged to be obedient to their husbands. In 2004, the article on obedience has been left out of the new family law. However, the wife can still lose her right to maintenance if she 'has been ordered to return to the conjugal home and has refused' (art. 195, translation: HREA 2004). This means that some connection between maintenance and obedience remains. Mir-Hosseini has described strategies in Moroccan courts before the reform of the *Moudawanah* in 2004 with regard to maintenance and obedience, which are highly similar to the Egyptian case. She observed that the court is often used as a kind of arena to negotiate the conditions of divorce. Most cases are withdrawn or abandoned before a ruling is issued because the desired result is already obtained (Mir-Hosseini 2000, p. 46-47).

After divorce, the marital obligation of the husband to provide maintenance for the wife, including accommodation, remains intact during the *'idda*, the waiting period after a divorce and remains to be linked to obedience.[8] After this period has passed, the wife no longer has rights to maintenance from her former husband. Furthermore, a mother can be entitled to compensation for nursing and bringing up the children from their father, as she cannot support herself properly while taking care of the children (Jordens-Cotran 2007, p. 734). Apart from the right to maintenance, a divorced woman also has a right to a *mut`a*, or compensation for the divorce and – if agreed on in the marriage contract – the deferred *mahr*. Although the *mut`a* is formally a kind of compensation for the damages done to the wife for being divorced by her husband, it is now also paid by husbands when women initiate a no-fault *chiqaq* procedure. According to Jordens-Cotran, this unlinking of the *mut`a* and fault, accompanied by developments in Moroccan legal practice would justify the qualification of the *mut`a* as a form of alimony or maintenance (Jordens-Cotran 2007: p. 737).

In Morocco, marital property of the spouses remains separated at the moment of marriage. According to article 34:

8 The *'idda* is meant to clarify the paternity of children. During this period women cannot remarry. In principle, it will last three menstrual cycles or, if the woman is pregnant, until the child has been born, with a maximum of one year after the divorce.

> All possessions the wife brings with her to the marriage including furniture and accompanying items are her property. When disputes arise concerning the remaining household furnishings, the matter is decided according to general rules of evidence.
> However, if neither the husband nor the wife presents any evidence, the husband under oath claims those effects that men habitually use and the wife under oath claims those effects that women habitually use. Objects commonly used by men and women will be, upon the sworn word of both of the spouses, shared between them when neither of them renounces his or her oath. (article 34 new *Moudawwana*. Translation: HREA 2004, p. 13)

In these articles, the separation of property is framed as a right of the wife, her personal property remaining her own. However, after describing the possibility to include another division in an addition to the marriage contract, article 49 goes on to discuss the possibility of dividing property accumulated during the marriage:

> [...] In the absence of such an agreement, recourse is made to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets (article 49 new *Moudawwana*. Translation: HREA 2004: p. 16)

According to Jordens-Cotran, this article has been introduced in the new *Moudawana* in 2004, coming from customary law in some parts of Morocco, to have both partners share in the increase of value of the marital property during the marriage (Jordens-Cotran 2007, p. 802-803).

7.2.3 The Netherlands

In the Netherlands, a marriage certificate is the official document written to document the marriage at the civil registry. However, while couples receive a *trouwboekje* or marriage booklet, they do not automatically obtain a copy of the marriage certificate like in Morocco or Egypt. It is not possible to put any stipulations in the 'marriage contract' itself, but it is possible to sign a prenuptial contract in addition to the marriage regarding the division of property and financial resources during the marriage, called *huwelijkse voorwaarden* or conditions of marriage. These contracts need to be made and signed by a notary before the marriage, and it can be quite expensive in more complicated cases.[9] In 2009, in about one out of four marriages a prenuptial arrangement was made.[10] There are several kinds of prenuptial agreements possible. In 2009 almost 30% of agreements were based on the principle of *koude uitsluiting*, or 'cold exclusion', meaning that the property of both spouses remains completely sepa-

9 Based on a basic comparison of notaries' websites I estimate that the costs range from around 400-500 euro for the cheapest option up to 1000-1500 euro in more complicated cases. It is also possible to make such a contract later, during the marriage, but that requires a more complicated and costly court procedure (Van Mourik & Nuytinck 2006, p. 112-117).

10 These percentages include so-called *geregistreerd partnerschap*, the registered partnership, which is equal to marriage with regard to property.

rated.[11] All other agreements have some kind of mix between community and private property, generally in the form of a *verrekenbeding*. This means that the property remains separated, but that the spouses equally share their income (Schols & Hoens 2012).

In the Netherlands, during marriage, both spouses owe each other '[…] faithfulness, aid and assistance. They are obliged to provide each other with the necessary [means of living]' (BW.01.81). Accompanied by the default system of communal property this means that, legally, all assets and income are taken to be shared. Although this norm of spouses maintaining each other seems to be gender neutral, practices are highly gendered. According to CBS research based on the period 1990-1999, in 69% of families, the husband provided over 60% of the family income, in 23% both spouses provided more or less equally and in only 8% the wife provided more than 60% of the income (Bouman 2004: p. 21). After divorce, this obligation of both spouses to maintain each other and their children continues, based on the *lotsverbondenheid* or solidarity created by the marriage. The amount of maintenance that needs to be paid is based on both the need of the one partner and the capacity to pay of the other partner. It can be determined by the court or arranged by the partners themselves if they prefer. The obligation to pay spousal maintenance lasts 12 years or, if the marriage lasted less than five years and no children were born, as long as the marriage lasted.[12] The amount is corrected for inflation each year and can be altered if needs or ability to pay change. The obligation of maintenance ends if the receiving partner remarries or cohabits with a new partner. Because, legally, maintenance of children takes priority over maintenance between spouses, spousal maintenance is less common than child maintenance (Vlaardingerbroek et al. 2011, p. 166, p. 187). In 2007, only in one out of five divorces the husband needed to pay spousal maintenance to the wife, whereas in less than 1% of the divorces in 2007 the wife paid maintenance to her former husband (Sprangers & Steenbrink 2008, p. 17). Moreover, as the amount of spousal maintenance awarded is in half of the cases less than 600 euro per month, many divorced women who have no or only a limited income of their own need to apply for social security or find a job. The maintenance they receive for themselves or their children will then be deducted from any social security payments, thus often making no difference in their financial situation.[13] According to Bouman, the financial effects of divorce are generally different for men and women.

11 This seems to be a recent trend. Until 2003, the percentage was going down, with a low point of only 11%, while in the past, the number of 'cold exclusion' arrangements was far larger, around 70% in 1970. After 2003, the number of 'cold exclusions' went up sharply again. The researchers note that part of the difference may be related to a broadening of the definition of 'cold exclusion' (Schols and Hoens 2012) (see also: Van Mourik & Burgerhart 2005; Van Mourik & Nuytinck 2006).

12 This period of 12 years has become the subject of much public debate. In 2012, a new bill was introduced in parliament, limiting the maintenance period to a maximum of five years, based on 'important changes in the relationships between men and women'; women's emancipation; and the abolishment of the traditional division of labour. *Kamerstukken II* 2011/12, 33 311, nr. 3, p. 1-2.

13 http://www.rijksoverheid.nl/onderwerpen/bijstand/vraag-en-antwoord/krijg-ik-een-lagere-bijstandsuitkering-als-ik-andere-inkomsten-heb.html [Dutch government website], accessed on 11 April 2013.

The financial situation of men generally improves, especially if the children stay with the mother, whereas the financial situation of women generally deteriorates after divorce, even when taking into account that men generally need to pay (child) maintenance (Bouman 2004; Verstappen 2011).

In the Netherlands, at the moment of marriage, all property and debts of both spouses becomes communal property, unless the couple agrees on writing *huwelijkse voorwaarden* or a prenuptial contract.[14] This is related to a view of marriage as an economic unit, in which both partners share profit and loss, regardless of who performs economic or household tasks. This view is based on a male-provider model female home-maker model, meaning that the wife is compensated for her caring and household work by sharing in the income and property accumulated by the husband. However, the Dutch system of the communal property can have severe consequences if, for example, during the marriage the business of one of the spouses becomes bankrupt. The debts of the business will then be recovered from the communal property, affecting both spouses. Together with large welfare differences between the spouses, one of the spouses owning a business is one of the main reasons for a prenuptial agreement (Van Mourik & Nuytinck 2006; Van Mourik & Burgerhart 2005).

After a divorce, the communal property needs to be divided between the spouses. If no prenuptial agreement has been made, all property, including debts, should be shared equally. If prenuptial agreements have been made, there may still be a need to divide property, based on the type of agreement. The spouses are free to divide the property between them as they wish, or they can, in cases of conflict, ask a judge to decide about the division (Van Mourik & Nuytinck 2006; Van Mourik & Burgerhart 2005; Vlaardingerbroek et al. 2011). In transnational divorces, a Dutch judge needs to decide whether Dutch or Moroccan/Egyptian law is applicable to the division of property. This has been arranged in the Hague Convention on the Law Applicable to Matrimonial Property Regimes, article 4, and can be a rather complicated affair, even for lawyers and judges. Main factors taken into account are the shared nationality of the spouses (if any) and the first communal country of residence after the marriage (if any).[15] As nationality and country of residence are not always stable or clear in transnational marriages, this can lead to legally complicated situations, where part of the property accumulated in the marriage is divided according to Dutch law and another part following Moroccan or Egyptian law. However, if a couple has made an explicit choice in a prenuptial arrangement or marriage contract regarding the legal system they want to be applicable to the property this choice takes precedence (Jordens-Cotran 2007, p.801-806).

In the Netherlands, both the prompt and the deferred *mahr* from Moroccan and Egyptian marriage contracts can cause problems at the moment of divorce. Sometimes the deferred *mahr* is interpreted as a form of maintenance after divorce (Rutten 2011)|. If the wife has her own property or source of income, the judge may there-

14 As arranged in art. 1:93-113 BW.

15 Morocco, the Netherlands and Egypt are all on the list of *nationaliteitslanden*, article 4, lid 2 sub a, Haags Huwelijksvermogensverdrag 1978. See also: Jordens-Cotran 2007, p. 808.

fore decide not to grant the deferred *mahr* to her because she is not in need of financial assistance or because the *mahr* agreed upon overburdens the husband's capacity to pay.[16] The prompt *mahr*, and other marriage gifts such as the *shabka*, which are paid at the moment of marriage, can cause other legal problems during a divorce in the Netherlands. If Dutch law is applicable, and the spouses have not arranged *huwelijkse voorwaarden*, all property will be considered community property and will need to be divided after divorce. This can mean that the wife needs to return half of the gifts she received at marriage to her husband, even though these gifts are socially considered to be her private property.[17]

7.2.4 Conditions upon marriage – possibilities for transnational couples[18]

As we have seen, it is possible in all three countries to make official agreements at the moment of marriage, making it possible for marrying couples to deviate from some of the standard legal implications of marriage. I distinguish four types of agreements that can be made by transnational Dutch-Moroccan and Dutch-Egyptian couples at the moment of their marriage. First of all there are agreements with regard to the division of property. By making a prenuptial contract, couples marrying in the Netherlands can deviate from the default-situation of communal property.[19] In Morocco and Egypt, on the other hand, a complete separation of the property of both spouses is the standard. In Egypt, couples cannot opt for any other division in their marriage contract. However, it is possible to include a list of property brought into the marriage by the wife, called an *ayma* (see: Sonneveld 2009, p. 116-118). In Morocco, since 2004, the spouses can agree on a different division and use of property accumulated during the marriage. Just like the marriage contract, these agreements need to be written by a notary, but in a document separate from the marriage contract.[20] A second type of agreement in the marriage contract is the *mahr* or *sadaq* (dower), an amount of money paid by the husband to the wife and her personal property. A third form of agreement is the choice of the law applicable to the marriage. In the Netherlands, couples agree in their prenuptial agreement on the law of which country will be applicable to their marriage and in case of divorce. This issue is of specific interest for transnational Dutch-Moroccan and Dutch-Egyptian couples, because of the large differences between on the one hand Dutch and on the other hand Egyptian and

16 See for an example with a Dutch-Egyptian couple: Hof 's-Gravenhage, 17 December 2008, *LJN* BG 9476. See for an Iraqi-Dutch case in which the mahr was awarded as maintenance, but without looking at need or means Rechtbank Utrecht, 30 January 2009, *LJN* BC2923.

17 See for two Dutch-Turkish examples in which the bridal gift consisted of jewellery, Hof 's-Gravenhage, 15 November 2006, *LJN* AZ 2935 and Hof 's-Gravenhage, 19 April 2006, *LJN* AY5780. Remarkably, in both cases, the disputed jewellery was missing and both wives accused the husbands of stealing it during the divorce process. For a discussion of this last case see also: Jansen Frederiksen 2011.

18 This section is partly based on a forthcoming article in the Oñati Socio-legal series (Sportel, forthcoming).

19 As arranged in BW.01.93-113.

20 Art. 49 *Moudawana* 2004.

Moroccan legal principles on the division of property during the marriage and other financial issues such as spousal maintenance. However, such agreements on the applicable law are only valid when the divorce or conflict takes place in the Netherlands. In Morocco or Egypt such a choice of applicable law is not valid. Moroccan or Egyptian family law is always applied to marriages in which a Moroccan or Egyptian spouse is involved. The last form of agreement in the marriage contract concerns interpersonal stipulations, permitting or prohibiting certain behaviour of the spouses during the marriage. As these interpersonal conditions have already been discussed in chapter 4, I will limit the discussion in this chapter to how and why the transnational couples in this research have made use of the other three possibilities for agreements at their marriage.

After shortly introducing the legal provisions with regard to the financial effects of marriage and divorce in Egypt, Morocco and the Netherlands, I will now first outline the main perspectives on proper financial arrangements after divorce found in the interviews. Afterwards, I will focus on the consequences of the legal provisions and their interactions for transnational couples in two parts. First, I will discuss conditions upon marriage, a topic that has been much debated in the context of mixed marriages. I will explore the possibilities for transnational couples and how and why the respondents have made use of these possibilities at the moment of marriage and subsequently, upon divorce. Secondly, I will describe how interviewees handled maintenance and the division of property after transnational divorce.

7.3 A fair deal? Images on proper financial arrangements

Coming from different backgrounds and legal systems, spouses may have quite different perceptions of what financial arrangements during and after transnational marriages are actually considered fair and proper. In the interviews, I found different perspectives with regard to perceptions of a proper or fair arrangement of financial aspects of marriages and divorce. Although these perceptions were, of course, informed by respondents' positions and interests, three general lines of reasoning can be found. First of all, people are arguing from a moral perspective of earning and deserving, based on a balanced and equal division of work and its rewards, both paid and unpaid. Central in these stories is the earning of certain rights by working for them and losing them by 'bad' behaviour. Secondly, there is the moral principle of need and capacity, of sharing wealth and welfare. Thirdly, there is a perspective of – actual or perceived – legal rights. These perspectives are not exclusive and respondents regularly shift between them during the interview.

In the first moral discourse, the sharing of financial means during marriage and after divorce is framed as something which can be deserved or lost with proper or improper behaviour. For example, René, the Dutch father who refused to pay spousal maintenance after his ex-wife took their children abroad without his consent:

> R: It was just a matter of principle. I think that it's strange if in child abduction cases the parent who stays behind should still pay these kinds of things. I'd think that this really is a typical example of a poignant situation. Not because of the money, I can afford it. But, like, it's just insane. Similar to those criminals who run abroad, while social service continues to pay their benefits, you know, it's really odd. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

In this quote, which is rather similar to his remarks about child maintenance, René compares his ex-wife's maintenance to criminals fleeing abroad while still receiving social security payments. She no longer deserves to be maintained after taking the children away from him. Even though the court did not agree, he did manage eventually to convince the LBIO of his views when his wife's lawyer transferred her claim to them. Similarly, Rabia, a Moroccan woman living in the Netherlands was shocked when, years after their divorce, she was approached by the municipality in which her former husband had just applied for social security:

> R: He returned to the Netherlands to apply for social security. The first time, he went to live in [small town]. The local government of [small town] contacted me because of the maintenance. I had to pay maintenance to him. Because of the law, we were bound to each other for ten years. I was out of my mind then. Because I had to pay him 300 *gulden*, 300 euro, something like that. No, it was before 2002, so I had to pay 300 *gulden.*[21] I completely lost my cool. I wrote a very angry letter to the *wethouder* [local administrator] to explain my situation. My brother also took steps to check where he was living, what he was doing and so on. And then we managed to arrange that I did not have to pay maintenance. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband)

Rabia was outraged at the thought of having to pay maintenance for the man who left her and their six children in severe debt, contracted to fund his business abroad, without any support or contact after his departure. Even though he was in need of maintenance, and the municipality's request for maintenance was standard procedure she felt that her husband did not deserve to be maintained by her after abandoning her and the children for a new girlfriend. She had been the main breadwinner in their relationship as well as the main caregiver, and she still resented him for not providing his share of the work. In a last example, Sofia, an Egyptian woman felt treated unjustly when her former husband refused to pay maintenance:

> R: Yes, it has been a long while. It doesn't matter anymore to me. The only thing is how he played it. I never received any maintenance from him in the Netherlands.
> I: Not at all?
> R: He played it in a way. He ran up debts. So he had to pay his debts. And he kept the house. Would you believe it, he was cheating on me, I was a housewife. I was given the brush-off, I

21 300 *gulden* is about 135 euro.

> got nothing at all. And he got everything. But now he is living like a dog, alone. Nobody wants him. (Sofia, Egyptian woman divorced from Egyptian man living in the Netherlands)

Sofia claims she should be receiving maintenance. As she had been a housewife, providing care and housework, and, moreover, her husband had cheated on her, she should have gotten her share of his resources, instead of her former husband keeping everything. As discussed above, only when she applied for social security the local government managed to have the former husband pay his part for a while. All these respondents focus on moral obligations in relationships, for example in sharing work in an appropriate and fair manner and keeping contact between parents and children. Proper financial arrangements are a consequence of those moral obligations.

The second moral discourse centres on the concepts of need and wealth. In this discourse, welfare should be equally shared during the marriage and after divorce, without major differences between the partners. Many spouses in transnational marriages expect (former) husbands to maintain their wives during marriage and after divorce if they need it, regardless of actual legal provisions in this respect.

> R: He did not want to give anything, right? That's why they go abroad [to marry], not to give anything to their wives. And I think it's unfair. Very unfair. 'You came from Morocco; now go back to your country, because you won't get a thing from me. Everything is mine.' But this house is also my house. I lost my house [in Morocco], I don't have another home. But they don't think about that. Yes, you're coming to share their life. But they don't want to share. Nothing at all. [...] He knew everything about my finances. Because I have a principle. We are partners, we need to share everything. But from his side, his life is his. He is taking decisions without consulting me. He is determining things for me. Without my knowledge. I find that regrettable. I think it's awful. Because I'm a human being too. (Malika, Moroccan woman divorcing from Dutch husband, living in the Netherlands)

Malika felt she was treated unjustly by her husband. As she sees it, marriage is about sharing. She was sharing her life and possessions with her husband and considers it to be unfair that he would not share his wealth with her and her daughter when she ran out of money. Moreover, he took financial decisions without even consulting her, not sharing knowledge about his financial situation. Looking back on her marriage, Malika now suspects that he did this on purpose, that he went abroad to find a Moroccan woman that would not demand sharing, like other men of 'his kind'. Interestingly, her ideas and actions about sharing did not relate well to the Moroccan legal system she grew up in but were closer to the Dutch system of communal property during the marriage. Cultural differences regarding Dutch and Moroccan family law thus cannot explain the conflict.

These two perspectives can be described as different moral discourses. Merry (1990, p. 112-115) and Sarat and Felstiner (1995, H2) have described the dominance of moral discourse in describing marital problems and divorce cases. Even though the Dutch system of no-fault divorce makes fault-based moral claims irrelevant, there are some moral claims possible in maintenance cases. As maintenance is based on the

continuing solidarity of the spouses after marriage, this solidarity can, in rare cases, be breached, for example when the spouse receiving maintenance abuses or mistreats the paying ex-partner.[22]

The last discourse is the legal perspective, the claiming of – real or perceived – rights by referring to the law:

> R: I mean, at some point it should just stop. I gave him back everything. His house, everything that was his. I returned everything. I just did not want to have it anymore. According to the law, he should have bought me another house. I did not ask for it. And still, trying to make life difficult for you, trying to hurt you. In any way possible. (Elizabeth, Dutch woman divorced from Egyptian husband living in Egypt)

In her painful story, Elizabeth uses a mix of moral and legal discourses. In her anger Elizabeth refers to both her legal rights as well as her own good behaviour in renouncing some of these perceived rights. Moreover, she also seems to refer to a *Bezness*-frame of Egyptian men taking money away, regardless of social class. Another mother also referred to the Egyptian legal provisions about children's maintenance:

> You know, there are certainly things of which I think they just have to be done. Because the boys now need braces. And then I think [ex-husband], you can handle that. Normally the man has to take care of everything, tuition, clothes, medical costs, everything. I think that's going too far. (Janneke, Dutch woman divorced from Egyptian husband, living in Egypt)

Even though she does not agree with the Egyptian legal principle of fathers being responsible for all costs of their children, and therefore also participates in maintaining the children, Janneke does refer to this legal principle when determining her position on which costs she does and does not pay. As such, she is actively relating herself to a 'shadow of the law' (Mnookin & Kornhauser 1979), sometimes choosing to pay part of the children's costs, at other times deciding her former husband needs to pay.

More Dutch women in mixed marriages referred to this Moroccan and Egyptian legal norm of men providing for the family regardless of the wife's means. Related to the *Bezness*-frame of false love, this norm of male providers is sometimes used as a kind of test to determine whether their potential spouse is a good man and not just pursuing their money or a residence status:

> Then he had bought something and asked me for money. And from that moment I had the idea that this did not feel right to me. [...] In the Islam [sic], it is absolutely not permitted that a husband asks his wife for money, right, to make a certain purchase for himself. So that did

22 See for an example in which the wife stalked her former husband and lost her rights to maintenance: Hof Leeuwarden, 19 November 2008, *LJN* BG4804; and a case in which the wife took the children abroad without the consent of the maintenance-paying father, Hof Leeuwarden, 26 May 2011, *LJN* BQ7255.

> not feel right to me. I gave him the money; it was 300 euro; so it did not run into thousands right away. It was very strange for me. I asked him: is something wrong? You never asked me for money. You have always provided for yourself. We are trying to build something together, and this is very unfortunate. It just did not feel right to me. (Inge, Dutch woman divorced from Moroccan husband, no communal residence)[23]

Inge felt her former husband's request for money was improper. She refers to an 'Islamic' notion of men not being allowed to ask their wives for money, possibly based on the concept that in Moroccan family law husbands are responsible for maintaining their wives and children, keeping the wife's property separate. What is remarkable about this strategy is that, once her Moroccan husband would have migrated to the Netherlands, Dutch law would have become applicable to their marriage, meaning that they would have been married under communal property, as they had made no prenuptial agreement in the Netherlands. In her story, Inge recounts several more incidents in which her husband asked for money. Looking back on her marriage, she now considered these incidents to be the first signs of her husband's false love, marrying her only for reason of her wealth or for a visa to the Netherlands. In the powerful *Bezness*-frame, attempts of less wealthy Egyptian or Moroccan men to share in their Dutch wife's wealth are easily suspect, as in the romantic image of marriage informing this frame 'true love' excludes any other motives for marriage, including financial gain.

Like the discourse of female entitlement to maintenance, these moral discourses contain gendered elements. All three perspectives are related to care and the division of labour in marriage, and as such are all gendered but in different ways. First of all, the discourse of deserving and earning has close ties to the child welfare discourse. As we have seen in chapter 6, the concept of the best interests of the child is of paramount importance in the stories of divorced parents. Secondly, the discourse of need and sharing is remarkably absent in the *Bezness*-related stories, where Egyptian or Moroccan men, despite their lesser wealth are blamed for financially benefiting from their Dutch partners, making them suspect of false love. None of the interviewed women or men blamed a wife for financially benefiting from her husband or being in the marriage only because of the money. Below I will describe in more detail how the interviewees arranged the financial consequences of their marriage and divorced using these three discourses, starting with the issue of conditions upon marriage.

7.4 Preparing for a transnational marriage – conditions upon marriage

Most of the interviewees had included in their marriage contract some form of the three types of financial conditions discussed above, *mahr*, prenuptial agreements and choice of law. In most cases this was a *mahr*, obligatory for the validity of an Egyptian

23 This case is discussed in more detail in Sportel, forthcoming.

or Moroccan marriage. In six interviews, mostly with Dutch-Moroccan or Moroccan spouses, it did not become clear whether there were any conditions agreed upon, either because the interviewee did not know or remember what had been in their contract or did not seem to understand the question. One Moroccan interviewee, although she reluctantly answered the question, remarked that it was a sensitive issue to ask questions about. This may be part of the explanation of such a high number of unclear answers, which did not happen with any other subject in this research. Below, I will now discuss how and why respondents in this research included each type of condition – arrangements with regard to marital property, *mahr*, and choice of applicable law – in their marriage contract and how this turned out at the moment of divorce.

7.4.1 Arrangements with regard to marital property

The first type of financial agreement, arrangements with regard to marital property, were only used by mixed couples getting married in the Netherlands, and by one Dutch-Egyptian couple planning to move to the Netherlands after their marriage. Of the three interviewees who married in the Netherlands (all of them mixed marriages), only one did *not* sign a prenuptial agreement. She had very clear reasons not to do so, directly related to her marriage being mixed:

> [...] We celebrated a large wedding, and everything in communal property, so everyone knew that it wasn't for a residence permit. He already had a residence permit for his business. He had a [business]. So communal property, sharing everything, so he could show everyone that it was serious. (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands)

Margriet was afraid people would consider their mixed marriage a marriage of convenience, referring to the powerful Dutch discourse on marriages of convenience, marriages intended only to provide a residence status present in the Netherlands (de Hart 2003: p. 127-129). In the context of this discourse, she did not have a prenuptial agreement. Without a prenuptial agreement all property and debts, including the husband's business, became communal at the moment of marriage. This way, the couple aimed to prove that the husband was serious. Apparently, it was only something the husband had to prove, not she. Similar to the *Bezness*-frame of one-sided love, it is only the Moroccan or Egyptian partner who faces an accusation of false love.

The other two couples marrying in the Netherlands and a Dutch-Egyptian couple marrying in Egypt but intending to settle in the Netherlands all made an agreement at a Dutch notary's office. Although one Dutch woman could only vaguely remember what she agreed on, only that they separated the property, the other two respondents took quite some effort to draft a contract which would be valid in both legal systems, consulting with legal experts in both countries.

> Then she also wanted *huwelijkse voorwaarden* in the Netherlands. Because the marriage would also be registered here, so you need the prenuptial agreement in the Netherlands. Because of the amount of property her family owned in Egypt. It was all shared property, and she did not want it to dilute, that wasn't acceptable for her family. So we just had to put clearly on paper that it would remain separated. Moreover, according to her own customs, in Islamic law property remains separated if you marry. So that's what we agreed on. [...] For the rest it was nothing out of the ordinary, just because we kept everything separated. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

In this example, the couple made arrangements in the Dutch prenuptial agreement that their Dutch financial situation closely resembled Egyptian (Islamic) law, at the initiative of the Egyptian wife in order to protect the property of her family. René complied with his future wife's wishes; he did not seem to consider it a particularly important aspect of their marriage or a reason for bargaining.

Contrary to the marriages conducted in the Netherlands, none of the interviewees that married in Morocco made use of the possibility to change the default arrangement of marital property. However, several interviewees did refer to the possibility when asked about the conditions in the marriage contract:

> R: I never asked about it. I don't think they did that. But now they do, I think.
> I: I don't believe it happens much, no.
> R: Well, it happens of course. I heard it happens now. For example if someone gets married, they usually say, everything in half. If they divorce, the wife gets half and the husband gets half. But he, oh no, he never would have done that. And I never actually asked about it. I never paid attention to such things. It was the last thing on my mind. [...] Neither in the beginning. Maybe I was too young and did not think about it. And it also was because, well, because I did not work. What could I put in my half? (Jamila, Dutch-Moroccan wife divorced from Moroccan husband, living in Morocco)

Jamila seems to refer to the new possibilities to include arrangements on the division of property in an appendix to the marriage contract, possible since the introduction of the new *Moudawana* in 2004. However, she also suggests that she was not in the right position to get her husband to agree on such conditions, even if she would have known about the possibilities.[24] Moreover, she thinks she should also have brought some property and income into the household to be able to negotiate such a division of property with her future family-in-law.[25] Some of the respondents who have married recently indeed recalled that the *adoul*, or notary performing their marriage, men-

24 As she married before 2004, this was not yet possible.

25 Jamila might also be referring to the second part of this law, art. 49 *Moudawana*, which states that 'In the absence of such an agreement, recourse is made to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets' (translation: HREA 2004, p. 16).

tioned that they had the right to attach an arrangement on the division of property to the marriage contract. However, none of them had actually made use of this option:

> R: We did not arrange anything, we just got married. We could have done it. [...] If people get married, the notary repeats that it is possible to include conditions. Say, is it communal property or should each have his or her own belongings. And put that on a piece of paper, apart from the marriage act. And then we thought it was not important. Because we made nothing, no extra contract.
> I: And later, in the Netherlands?
> R: No, we did not do that either. It was never a question. It was like, what I have is yours, and what you have is mine. Finished for both. That's what it was like in the beginning. (Malika, Moroccan woman divorced from Dutch husband, living in the Netherlands)

This quote can be read in several ways. It does not become clear whether this Moroccan woman and her Dutch husband did not make an extra agreement on marital property because they thought their property would be communal anyway, or because it would be separated anyway, or just because they did not consider it to be important. As we have seen, in Morocco, property remains separate at marriage, while in the Netherlands it becomes communal. After their Moroccan marriage, the couple settled in the Netherlands. This means that Dutch law of marital property would be applicable to their marriage, the Netherlands being their first place of communal residence. As they did not have a contract of prenuptial agreement in the Netherlands stating otherwise, all their Dutch property is communal, even though they refused to arrange this in their Moroccan marriage contract. As will be explained below, this ambiguity became a major conflict in their divorce case when Malika discovered that her husband had other intentions for the division of property in their marriage than she did, each seemingly assuming that the other's law would be applicable. Below I will continue my analysis of marital agreements with a discussion of the second type of financial agreement, choice of law.

7.4.2 Choice of law

The second type of financial agreement, choice of law, was used only by one couple in this research. Their entire Dutch prenuptial agreement was an effort to have their legal situation arranged similarly in both countries, even though they never actually registered the Dutch marriage in Morocco:

> I: Did you have the contract acknowledged or registered at the consulate?
> R: No. We made a French contract *onder huwelijkse voorwaarden*, in which it was clear that my father was the *wali* [marriage guardian] and I would have a dowry, yes, that looked like the

> phrases in Moroccan style.[26] But we particularly married for the Dutch law. [...] In the end we did not need it [the contract], because we divorced in the Netherlands. But even then we thought, there is a difference in law between Morocco, and the Netherlands, and we did not want to agree on something here that would be interpreted differently there. And the other way around as well. We did not want to agree on something that would be interpreted negatively in the Netherlands. So we did what was possible, necessary, to make something valid in Moroccan law at that time, and we integrated that in this French-language contract. With separated property, my father was *wali*. It just missed mentioning I was not a virgin, you know, those kinds of things. But it did mention that I had a right to travel to my parents, travel to Europe, and a right to work. You can see that there, each spouse had their own private property, while in the Netherlands we pretend you always automatically have to add everything and go half.[27] (Eva, Dutch woman divorced from Moroccan husband, living in the Netherlands)

Eva claims here to be married mostly for Dutch law, choosing to marry in the Netherlands and not even registering the marriage with the Moroccan authorities, even though the prenuptial agreement stated a choice for Moroccan law to be applicable to their marriage. She also shows a preference for some aspects of the Moroccan family law, such as the separation of marital property. The most important aim of their prenuptial agreement seems to be the reconciliation of the two legal systems, not leaving any room for misinterpretation or conflict afterwards. Eva seems to consider Moroccan family law not so much as a threat or something to protect herself against as some of the other interviewees. Instead, she aimed to reconcile their legal situation in both countries, aiming at a contract which would be acceptable in both legal systems. The contract also included a *mahr*, which will be further discussed below.

7.4.3 Mahr

The third and last type of financial agreement is the *mahr* or *sadaq* (dower), an amount of money paid by the husband to the wife, and her personal property. In this research, a difference could be seen between marriages conducted in Morocco and marriages conducted in Egypt. In most marriages concluded in Egypt, the *mahr* did not seem to be an important issue. For example:

> I: Was there something like a bride price in it [the contract], for example?
> R: Yes, yes, and everybody just says something. Maybe we had one pound or something. [We] just did not discuss it.
> I: It was never an issue at the divorce?

26 Eva uses the term *onder huwelijkse voorwaarden* here meaning a prenuptial agreement with separated property. A *wali*, or marriage guardian, giving permission for the marriage, used to be obligatory when concluding a Moroccan marriage.

27 This quote is also used, and the case is discussed in more detail in Sportel, forthcoming.

> R: No. That one pound? I don't even remember what it was [laughs]. No, and I did not do it in my second marriage either. (Conny, Dutch woman divorced from Egyptian husband, living in Egypt)

Conny did not consider the *mahr* a serious issue in her marriage or divorce, and even considered my questions regarding the *mahr* to be funny. Of the eight couples that married in Egypt or at an Egyptian embassy abroad, five Dutch women had only a symbolic amount in their contract whereas one Dutch woman claimed not having any *mahr* at all in her marriage contract.[28] In one Dutch-Egyptian case, however, there was a more substantial deferred *mahr* in the marriage contract. The Egyptian wife in this marriage insisted on a high deferred *mahr* in the Egyptian marriage contract, befitting the status and norms of her family:

> R: She said, 'well, it's customary here [in Egypt] that you have to sign for a dowry. That's how it's done; it's also a case of family honour and the like. Well, we're a pretty prosperous family, so we cannot just fill in a very small amount. But it's something I would never demand, say, I would never claim it in case [the marriage] would go wrong. But would it be all right if you would just fill in, – what was it, I believe it was 100,000 *gulden* or something, such an amount – that would be, like, acceptable for the standard of living we have.'[29] Well, if you won't claim it anyway. I mean, I didn't have that money, because back then I was just an employee at [company], say, then fine, I'll fill it in, no problem. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

Later, however, René found out that this was not as normal in her family as she claimed it to be.

> Because for example the story about the, what's it called, dowry-thing, you know. [...] Because if I had to pay it, hard luck, nowadays I have like, quite a lot of money. Because I sold my business. So I'm not so worried about 40,000 euro. But, I told her sister and she said: 'I married my husband for a dowry of one euro. Symbolic. So it's really nonsense that it isn't an option in our family. If you want I could send you our marriage contract.' So in those days she was also just telling things that aren't true. So well, apparently it was already in her. (Ibid)

René relied on his wife's explanation for the meaning of the marriage contract he signed, including the very high deferred *mahr* she claimed he would not really have to pay. As it was a transnational marriage, he had little knowledge of Egyptian family law or customs regarding the *mahr*. However, he later found out that his former sister-in-

28 In a last case, it did not become clear from the interview whether a *mahr* had been part of the marriage contract. This marriage took place in a church in the 1960s and might have been under Christian law. However, the interviewee was not sure which legal system was applicable. Both spouses were from different Christian denominations. According to Egyptian internal PIL, this means that the default Egyptian personal Status Code is applicable, instead of specific Christian personal status laws (see for a more elaborate discussion of Egyptian PIL in mixed-religion marriages: Kulk 2013).

29 100,000 *gulden* is approximately 45,000 euro.

law did not actually share his wife's perception of the customs in their family, he interpreted the issue as yet another sign that his wife had been lying to him, a pattern which he saw as being very persistent in this highly complicated and discordant divorce case.

In the Dutch-Moroccan interviews, the amounts of *mahr* paid or received were generally higher than those in Egypt. However, out of 13 interviews on marriages concluded in Morocco, in five cases I did not get a clear answer to the inclusion of a *mahr* in the contract. The respondents who did answer questions about *mahr* generally mentioned amounts ranging from 5000-10,000 DH (Moroccan Dirham).[30] One Moroccan woman divorced from a Dutch husband mentioned not having any *mahr* at all in her contract. The content and spending of the *mahr* also differed. Almost all of the interviewees described the *mahr* paid or received in their marriage to be 'normal', including the one woman who did not receive a *mahr*. The differences could thus possibly be related to some regional or familial differences in *mahr* practices. For example, in some cases the *mahr* was used to buy furniture for the future marital home, either by the husband or by the wife, which would then become the private property of the wife. Other women received gold or were instructed by their parents to buy gold from the money they received.

Looking back on their marriage, some of the interviewed women were not happy about the *mahr* they received.

> I: Was there something like that in your marriage contract, do you remember what was in [the contract]?
>
> R: Yes, there was an amount in there, indeed. Off the top of my head it was an amount of 1,000 *gulden*. Yes, he was [paying] 1,000 *gulden*.[31] Because I know enough stories in which [the husband] was really exploited. He was lucky with my parents; there were also parents who were really conscious of their value, so to say. And who let that be heard in the amount they asked for. Because my parents wanted [laughs] they just wanted to get rid of me as soon as possible. [...] just imagine, that's 500 euro nowadays, that's nothing. Nothing at all. (Naima, Dutch-Moroccan woman divorced from Moroccan husband)

Naima links the *mahr* she received to the value her parents attached to their daughter; the 'cheap' *mahr* reflected her parent's wish to marry her off as soon as possible. She was put under great pressure to marry as soon as possible. Malika, a Moroccan woman who did not have any *mahr* in her contract, also felt that her family might have been too easy on her Dutch husband. Even though she claimed elsewhere in the interview that it is not general practice to have a *mahr* in a Moroccan marriage contract and that it was not necessary in her marriage, she feels her family should have demanded a high [deferred] *mahr*:

30 About 500-1,000 euro.

31 About 450 euro.

> I: What did your family think about you getting married to someone from the Netherlands?
> R: Well, it was my own responsibility. If it would go wrong, I would have to take responsibility myself. That's what they said. It was a very easy family. Yes, it was lucky for him, right? I would have wanted them to be really warlike. Because back then he would have done anything to have me. Anything. But my family was so easy on him. I would have wanted my family to say: sir, if you ever want to get a divorce, we want [you to pay] this. He would have accepted. But we did not do that. I regret it. Yes, because people, those Dutch, or at least this man, thinks that if he asked me, I'm his thing. A very easy thing. No family, no nothing. I have no choice, just saying: yes and that's it. (Malika, Moroccan woman divorced from Dutch husband, living in the Netherlands)

After she came to the Netherlands, Malika was not treated well by her husband, who abused her and filed for divorce just before she would be entitled to an independent residence permit. She felt that, without the support of her family, she was powerless against her husband. She felt that she would have been more protected if she at least had had a high deferred *mahr* in her marriage contract, even though the protection of a high *mahr* would have probably meant little in a Dutch divorce case.[32] This is similar to what Mehdi has written about *mahr* practices among Muslim Pakistani's in Denmark: 'immigrants in their mental space still live and find protection in the law applied in their own countries' (Mehdi 2003, p. 128), although in none of the other interviews such a protective quality was ascribed to the *mahr*. Like the Dutch-Moroccan woman quoted above, this interviewee blamed her family for settling the marriage without or with just a low *mahr*. Contrary to the Dutch-Egyptian mixed couples quoted above it was not the wives themselves who bargained with their future husbands but the wife's family.

Another Moroccan woman was disappointed as promises made at the moment of marriage with regard to the *mahr* were not kept:

> I: When he got married, did your husband pay anything to you or to your family?
> R: I received nothing. Or rather, he did not keep his promise. He brought a bouquet. He had been to the hairdresser [laughs]. No, really, he did not [pay]. Though in Islam he should have given something, but he only paid for the ring. [...] Let's see, besides the furniture being mine. But that was of no use to me. We still had to buy it. It was of no use to me. He put in the contract that he paid something like 500 euro to me as a dowry. He bought furniture from that money. And the furniture was in my name. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

In this last case, the promised *mahr* was never actually received. Rabia was severely disappointed when she came to the Netherlands and it turned out that her husband did not have any money and did not even buy a bed for them. The promised furniture was eventually bought from her own salary after she found a job. This pattern

32 For a further discussion of *mahr* see also the volume edited by Mehdi & Nielsen (2011) and Jansen 1997.

continued throughout her marriage and divorce narrative, which ended with him abandoning her with severe debts and six children to take care of. This case clearly has transnational elements, if the marital home would have been in Morocco, or she would already have had family members living in the Netherlands, they could have checked the existence of the promised furniture and the financial affairs of the husband. Now his limited funds came as a surprise to her only after she migrated to the Netherlands.

Although a *mahr* is normally not a part of a Dutch marriage contract, the aforementioned Dutch-Moroccan couple aiming to make their Dutch prenuptial agreement valid in both countries also included a *mahr*:

> I: In the beginning [of the interview] you mentioned having made arrangements on a dowry?
> R: Yes.
> I: Was it registered and paid right away, how did you arrange that?
> R: In the [marriage] contract there should be mentioned, at least according to the Moroccan norms of that time, whether a dowry is involved. [Former husband] had bought an encyclopaedia from a colleague. It had cost him an arm and a leg and he was very fond of it. […]. He was the one who bought it from a colleague, it was his. But he thought it would be a good, symbolic dowry for me. Because it then would not be about the money, but just about, well, a symbolic value, highlighting my scientific side. (Eva, Dutch woman with Moroccan husband, living in the Netherlands)[33]

In an attempt to reconcile Dutch and Moroccan norms on *mahr*, the Moroccan husband creatively chose a present for his Dutch wife-to-be that pleased her and would be acceptable legally as well as socially in both countries, as receiving money would have been awkward for Eva. Below I will discuss how this symbolic *mahr* and other arrangements made at the moment of marriage turned out after divorce.

7.4.4 Conditions upon marriage: consequences after divorce

As described above, in all three countries couples have included financial conditions in the marriage contract or in a prenuptial agreement. What then becomes of these conditions in case of divorce? Are conditions agreed on in one country claimed and awarded in the other? I will now first discuss *mahr* after divorce and then prenuptial agreements, including choice of law. First of all, in all but one case in this research, the *mahr* agreed upon in the marriage contract was a so-called prompt *mahr*, paid at the moment of marriage. Only one of the interviewees mentioned any relevance of this prompt *mahr*, in her case money used to buy bedroom furniture, at the moment of divorce:

> I: Did you get those things back when you divorced?
> R: No, I did not get anything back. My bedroom is still there, my belongings are still there.

33 This quote is also used, and the case is discussed in more detail in Sportel, forthcoming.

> I: All your things are still there?
> R: Yes. I locked my room, but I think they opened it. I wasn't even allowed to take my room, my belongings. I had just some clothes, I took my clothes. Other than that, he has everything. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

Jamila felt treated unjustly as her former husband kept her and their child's personal belongings and the bedroom furniture that was bought from her *mahr*, even though it should have been hers, both legally and socially. But as her husband arranged the divorce secretly, having her sign documents she could not read, she might have unknowingly renounced these possessions in her divorce contract. In the one case in which a deferred *mahr* was written in the contract, this also became an issue at divorce. In this case, René and his Egyptian wife were living in the Netherlands. A large deferred *mahr* was included in their marriage contract, but the wife had promised not to claim it at divorce. However, when they eventually divorced she claimed it in a Dutch procedure. The court of first instance ruled that René had to pay the *mahr*, and he did. However, the court of appeal took another course:

> R: So later, in the court case, the divorce was in court then, she did claim that dowry. And then I just said in court like; well, she promised she would never do that, so that's what I presumed. But well, it's on paper, it was a signed piece. So then the judge decided, then she first had asked some text from some expert somewhere, from Islamic law here in the Netherlands. [...] If I remember correctly he wrote about it being a kind of maintenance.[34] Anyway, besides that he did not know what to do with it exactly. And ex [wife] claimed it was promised, it was put in writing. In the end the judge decided that was decisive, so it was awarded. Later, on appeal, it was dismissed. The argument of the court was that it wasn't mentioned in the Dutch prenuptial agreement. Apparently, we did not presume that stipulation would be executed. If we would have presumed that, it would have been in the prenuptial agreement. And the stupid thing was that I did not think about that. It was true, but I did not think at all about that plea, nor did my lawyer. [...] But I can say goodbye to the money, at least, that's what her lawyer told me, that she does not intend to ever return the money. (René, Dutch man divorced from Egyptian wife, living in the Netherlands)

Interestingly, here the court of second instance found a legal argument, the *mahr* not being in the Dutch prenuptial agreement, that supported the social argument of the husband, a promise made not to claim what was in the marriage contract.

Similar to these agreements about *mahr*, a Dutch woman had a prenuptial agreement with her Moroccan husband in which they kept their property separate. During the marriage, they decided to buy a house. Hoping that her husband would feel more responsible for the communal household, she put the house in both their names. He promised not to claim his half if they divorced:

34 *Van alimentatierechtelijke aard* in Dutch.

> R: And then he claimed his money, even though he promised he would not do so, so well. [...]
> I: And then you had to arrange the division of property?
> R: No, as such that wasn't a problem. Actually, he took very few things. And by mutual agreement. Can I take that? All right, take it, doesn't matter. Only the house, that was communal. And in the end it was arranged for. No, apart from that he left the whole business, and well, of course that was also because we made that prenuptial agreement, so he did not have much right to anything. (Ingrid, Dutch woman divorced from Moroccan husband, living in the Netherlands)

In this quote, Ingrid refers to both formal and informal agreements made during the marriage. On the one hand she acknowledges her ex-husband's right to claim part of the value of the house, as it had become communal property, on the other hand they had an informal agreement that he would not actually claim this right, and she was disappointed that he did. In dividing property after divorce, the couple was really bargaining 'in the shadow of the law' (Mnookin and Kornhauser 1979), both being aware of their legal rights and obligations. Even though Ingrid does not agree with her former husband claiming half of the house, she does not refuse, as she knows he is entitled to it and will win when going to court.

Similarly, in the case where the Dutch woman, Margriet, had decided to marry under the Dutch default system of communal property, to avoid accusations of being a marriage of convenience, she also regretted this choice afterwards. During the marriage she had not actively participated in the financial management of the household, and she had no idea of the state of her former husband's affairs. Though there were substantial possessions in Egypt and the Netherlands she could have laid claim to, Margriet was afraid that, as she knew nothing about their financial situation, she would be confronted with even higher debts, which she did not want to pay. She thus decided not to take the risk and formally relinquished all her claims to the property.[35]

In another way, Eva, who had arranged their marital property in the Netherlands to resemble Moroccan family law, including a strict separation of property, also did not keep to their earlier agreement. After divorce, they decided to split the property equally:

> R: We divided the property. It was clear he needed this, I needed that. [...] We could quite easily separate the things. We had agreed together like, you will get this many chairs, I will get that many, I'll get this many tables, you'll get that many, I'll take the *Friese* clock, you'll get the little bible... The photo's we divided equally, agreeing that we could always get copies of each other's photos. (Eva, Dutch woman divorced from Moroccan husband, living in the Netherlands)[36]

35 Art. 1:103 BW. Relinquishing claims to the marital property only works when debts are made by the other spouse; not when both spouses have signed for them. The spouse relinquishing all claims to the property can only keep her/his clothes and a bed.

36 This case is discussed in more detail in Sportel, forthcoming.

Thus, their carefully-drafted prenuptial agreement was never actually put into action, except for the *mahr*. To Eva's surprise, after their divorce, her former husband insisted that she kept the encyclopaedia he wrote in the marriage contract as a *mahr*:

> And well, it was in the contract, so when we separated I suddenly got the encyclopaedia. And I thought he could use it far better than I could, but no, he insisted; 'this is yours'. And it was a nice thing to have, of course. (Eva, Dutch woman divorced from Moroccan husband, living in the Netherlands)

However, as her *mahr*, it became hers at the moment of marriage, though she feels it only became hers when her former husband gave it to her at the moment of divorce. Eva does not refer to the formal arrangements made earlier, including the choice of law they made in their marriage contract. Instead they divided things according to need and personal preference. As can be seen from this and earlier quotes, their divorce was a friendly, harmonious one, making falling back on formal agreements unnecessary.

At the moment of marriage, it can be hard to imagine or foresee a divorce lying many years ahead, let alone in another country and legal system. Most arrangements for divorce made at marriage turned out differently. On the one hand, friendly promises not to claim or to pay what was put in contracts were not kept after a relationship broke down and spouses strategically used arrangements to support their own position. On the other hand formal arrangements and legal positions were not taken into account in a harmonious divorce where spouses divided property according to need. Using a mixture of moral and legal discourses, spouses navigated problems as they came up, dealing with legal matters such as separated property in a way to best fulfil their needs and worries at that particular moment, such as reconciling two legal systems or trying to fix a failing relationship. Below, I will further compare the financial consequences of marriage and divorce in all three countries with regard to spousal maintenance and the division of property and show how spouses have dealt with these legal provisions in their transnational marriage and divorce.

7.5 The financial consequences of marriage and divorce

After divorce, not one but two households need to be sustained. Spouses who have been investing their time in housework or child rearing instead of paid employment will need some kind of income or financial security after divorce. As has been discussed above, all three countries have made legal arrangements with regard to the division of property and maintenance during and after divorce, based on a similar male-provider model female home-maker model. However, the complex interplay of maintenance and marital property can be an issue in transnational marriages in two ways. First of all, the Netherlands on the one hand and Morocco and Egypt on the other hand have chosen different, even contradictory, ways to arrange for the financial security of divorced women. When spouses during their marriage migrate from

one country to another, the arrangements made in the first country may become invalid, such as a *mahr* in the Netherlands, or communal property in Egypt or Morocco. In theory, these differences can be used strategically by one of the spouses, through forum shopping. However, I encountered very few examples of strategic use in this study and none by the interviewees. Secondly, as has been discussed in chapter five, transnational marriage and migration can lead to gender inversions with regard to the gendered division of household labour, which can disturb a gendered pattern of compensation for care work. I will now go on to discuss how couples arranged financial issues and maintenance after divorce and how this relates to law.

7.5.1 Maintenance after divorce – a female right?

Legally, there are differences between spousal maintenance and child maintenance. However, in the interviews it often did not become clear which form of maintenance was being received or claimed, as many interviewees did not seem to be aware of the difference between the two forms, possibly because in all cases it was the wife who received the maintenance payments for both herself and/or the children. In the research, in ten cases some form of maintenance arrangement had been made by a court or by the divorcing couples privately, including one couple agreeing to share the costs of the children equally. Of these, six were arranged in the Netherlands, two in Morocco and two in Egypt. In 14 cases no such arrangements had been made, in one interview it did not become clear. None of the respondents interviewed in this research have reported paying or receiving a *mut'a*.

Even when spouses were awarded maintenance, the maintenance awarded or agreed upon was regularly not enough to live on. Moreover, as has also been described in chapter 6, in most cases the maintenance was regularly not paid. This corresponds with general practice described for the Netherlands and Egypt. Specific for the Netherlands is that divorced spouses without paid employment can apply for social security. If they do, the local government will try to claim maintenance for the former spouse:

> R: So we [interviewee and children] were on social security. But the local government in [Dutch city], they went after him. 'You can tell her [ex-wife] all you want, but not to us.' They [checked] his papers and everything, and they made him pay. For three years. Now the law is that they have to pay for five years. In our case [he] had to pay for two years, to the local government, not to me. (Sofia, Egyptian woman divorced from Egyptian husband, living in the Netherlands)

Sofia felt it was the council, responsible for social security, which had stepped in and made her husband pay, even after she and her lawyer did not manage to get anything

from him.[37] However, as the council deducts the received maintenance from the amount of social security, financially, the amount of maintenance paid makes little difference for the receiving women.

As mentioned before, it was in all cases the wife who was receiving maintenance payments from her former husband, for herself or for their children. None of the wives interviewed had paid any maintenance after divorce. This corresponds to Moroccan and Egyptian law and Dutch practice and also seemed the norm in the interviews:

> I: Did you make a maintenance arrangement?
> R: No, no, I declined. I said: 'you also need your money now'. I had my own income and I have not needed him. (Claudia, Dutch woman divorced from Moroccan husband, living in the Netherlands)

> I: Did you both always work during your marriage?
> R: Yes, yes. So I did not need any maintenance.
> I: And you did not have to pay either of course.
> R: No. I mean, we were both. But paying maintenance would have been weird [laughs]. That would *really* be a slap in the face for someone.. In the Netherlands, I don't know if it ever happens here [in Egypt]. I cannot imagine. (Conny, Dutch woman divorced from Egyptian husband, living in Egypt)

Both women in these quotes seem to regard maintenance as typically being paid by the husband to the wife, even though they had both been providing in their marriage. Conny even makes an explicit connection between being paid maintenance and male honour, describing being maintained by an ex-wife as a further insult adding to the divorce. In these two quotes, the women spoke about needing or not needing maintenance. They did not so much focus on whether they were actually entitled to maintenance but more as a resource they may or may not need. Claudia, for example, was living in the Netherlands and their children stayed with her former husband. It is therefore very well possible that if they would have gone to court, she would actually have had to pay her former husband child or maybe even spousal maintenance, a possibility which obviously did not occur to her. On the other hand, Conny was living in Egypt had no children. This means that she could only claim maintenance during the short *`idda* and maybe a *mut`a*. In her quote, she seems to assume she has a right to maintenance, and she only decided to forgo this right because she did not need any financial support from her former husband.

Similarly, Amar, the Moroccan father who had been the main care-giver during his marriage, complained about his financial situation after his Dutch wife abandoned him and their children in Morocco. He could not easily find a job and was completely

37 This was in the 1980s, when the LBIO was not yet active in claiming maintenance. I cannot understand why he had to pay for only two years. Since 1994, the obligation to pay maintenance is limited to a maximum of 12 years, before that there was no limitation in duration.

dependent on his mother and sister for housing and maintenance. Even though he was in a financially dire situation, he never makes any reference to having any right to receiving maintenance from his wife for himself or their children, like many women interviewed for this study do. Still, the wife could be legally obliged to pay child maintenance under Moroccan family law as the father cannot provide for the children (art 199 new *Moudawana*), and she would probably also be required to pay maintenance in a Dutch court case, if she had enough income. Instead of blaming his wife for not maintaining them, Amar blames the Dutch government for not paying child benefits and the Moroccan government for not taking care of the children: 'The children have no rights in this bloody awful country [Morocco]. [Son] goes to a poor school; it costs 20 euro each month, and 10 euro for transport.' (Amar, Moroccan man separated from his Dutch wife, living in Morocco).

As has already been discussed above, there was one case in which maintenance was claimed from a female interviewee, Rabia, although she never actually paid. However, it was not the husband himself who made a claim for spousal maintenance from his ex-wife but the local municipality where he had applied for social security. Even though Rabia could have solved the problem by taking legal action, instead she and her brother approached a powerful local administrator and managed to be exempted from actually paying the maintenance.[38]

Thus, when analysing how spouses deal with maintenance, gender is the most important factor and not the country of residence or origin. Talk about maintenance is highly gendered. While most female spouses felt a personal entitlement to maintenance from their former husband, none of the interviewed husbands felt such an entitlement, even when they could have legally claimed maintenance from their former wife. This gendered sense of entitlement to maintenance after divorce did not seem to be related to the division of labour during the marriage nor to any actual legal claims. In legally compensating for a gendered division of labour the family, maintenance is interconnected with the division of property after divorce. This is the subject of the next paragraph.

7.5.2 Division of property

After a divorce the property of the spouses needs to be divided. This is the issue in which there are the most legal differences between the Netherlands on the one hand and Morocco and Egypt on the other hand. Above I have already discussed how spouses made agreements about marital property and *mahr* upon marriage and how these agreements often worked out differently at the moment of divorce. I will now go further into how the interviewees who did not make such an arrangement handled the division of property after divorce. Some spouses did not have much property to divide, living in rental houses and owning only some personal belongings, and did not

38 As he had already lived together with another partner, the first wife would no longer be obliged to pay maintenance anyway.

tell much about the division. In the cases of interviewees who had been suddenly abandoned, their former husbands or wives often left mostly debts behind.

I will now discuss in some more detail a few cases having distinct transnational elements, in which the oppositions between the legal systems with regard to marital property play a role in the assumptions and conflicts of spouses. Rabia, a Moroccan woman divorcing in the Netherlands, who has already been discussed several times in this chapter, told for example how her lawyer informed her about the Dutch legal rules with regard to communal property:

> R: I paid for the house myself. And still they told me that, if I sell it, I need to return part of the money to him. And the value is always going up. I'm the only one to work, and the only one to pay for it, so far. He's out of the picture, does not do anything. And still, part of the sum has to go to him.
> I: And will you do that, if you ever sell [the house]?
> R: I don't know. [laughs]. I don't know. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)[39]

Rabia was surprised and annoyed to learn that, under the Dutch system of communal property, half of the house she owned was still property of her former husband, even though she was the one who had done all the work in their marriage, both providing and doing the housekeeping and child care work. As her husband had suddenly abandoned her years before the formal divorce took place they never actually divided the property. I suspect however, that her fear that he still could demand half if she ever sold the house is not necessarily accurate.[40] Still, she did not resist this arrangement in a formal legal procedure, instead she resisted it by just considering not to pay.

In another case, which has already been introduced earlier in this chapter, both spouses had different assumptions about the division of property in their marriage, related to the Dutch and Moroccan legal system:

> R: When I was here [the Netherlands] for three years, in [date], he started a divorce case. That wasn't a coincidence. I was three years here and he was afraid I would get my passport, and more rights. [...] The local government contacted me; that I could ask for a Dutch passport. The husband got that letter. He was worried and ran to start the divorce right away.
> I: Do you know why he was so afraid that you would get a Dutch passport?
> R: He did not want me to get more rights. He wanted me to always stay under Moroccan law. If I became Dutch, Moroccan law would be out of the question. But if I stay Moroccan, only

39 This case is discussed in more detail in Sportel, forthcoming.

40 As it is the property at the moment of the divorce, including the debts the husband left behind, that needs to be divided, not the value after ten years of hard work by Rabia to repay all debts accompanied by a spectacular increase in the price level of houses. Moreover, the former husband could already have claimed the right to half of the property at the moment of divorce or ever since, forcing Rabia to sell the house if necessary, not just at the moment of selling the property.

> Moroccan, he would always have hope. (Malika, Moroccan woman divorced from Dutch man, living in the Netherlands)

In this case, both spouses had assumed the other's law would apply to the marriage. While Malika, as discussed above, acted from a moral discourse of sharing, and freely invested her savings in the communal household, as she could not find enough suitable employment to pay for her and her daughter's upkeep, and spent time doing household and care work.[41] Her husband had assumed their property remained separated. The husband owned a lot of property, including a business, which he did not want to share with his wife. Still, he did not have a prenuptial agreement, something he, being a businessman, would most likely have done when marrying in the Netherlands. Apparently, the husband thought that by marrying in Morocco, Moroccan marital property law would be applicable, which would mean their property would remain separate and that this might change if his wife gained Dutch nationality. However, because they did not share Moroccan nationality, and their first communal residence was in the Netherlands, a Dutch communal property regime was already in place. Still, Malika feared that Moroccan law would be applied:

> Everything in this house is on mister's name. Even the little cat. My daughter got it from a friend. It was completely abandoned one year ago, just born, and my daughter brought it here. My daughter cried [when she heard]. I told her, that we cannot be sure to stay here. Because every time, that mister... What should I do? I'm getting divorced. And she said: 'yes, but the cat comes with us. If we are out on the streets, it comes with us, if we leave, it comes with us.' I said all right. [...] But the cat is in mister's name. Because mister is in charge here. [...] If the Moroccan law would be applied; I would absolutely have hard luck. My own clothes, I would not have them. Because everything is in his name. That would be awful for me and my daughter. And also for the little cat. (Malika Moroccan woman divorced from Dutch man, living in the Netherlands)

In her view, Moroccan law would mean that she would end up with nothing at all, not even her own clothes or her daughter's cat. Though this was certainly not the most valuable property in terms of financial value, it was very important to her. If Moroccan law would have been applied in the Netherlands, Malika would have gotten the worst of the differences between the Netherlands and Morocco, without any of the compensations for spouses doing care work provided by the two legal systems in case of divorce.[42] If Dutch law would have been applicable, it would not have mattered who spent or earned the money, as after divorce the couple would equally share in the wealth accumulated before and during the marriage. If both spouses would have agreed beforehand on Moroccan family law being applicable to their marriage, Malika would have been entitled to being maintained by her husband dur-

41 The daughter was from an earlier marriage in Morocco.

42 I do not know how the court case ended, but based on my legal knowledge and the lawyer's opinion I suppose the judge would have applied Dutch family law.

ing the marriage, and she could have kept her earnings and savings and possibly a *mahr*, as a buffer in case of divorce.

In a related case, in Egypt, confusion about the Egyptian marital property system also put a Dutch wife at a disadvantage. Although Elizabeth was running a successful business in Egypt before meeting her Egyptian husband, when she became pregnant they married and she stopped working to take care of their children and the household. Occasionally, she still did some freelance work.

> R: I made some money. And I gave it to him. I wish I hadn't done so. Because the law doesn't allow it, officially, right? But well, he did take it. And when we got divorced he said like: 'I don't know' [laughs].[43]
>
> I: Did you have your own bank account?
>
> R: No, nothing. I wasn't allowed anything. [... discussion of controlling behaviour of the husband during the marriage]
>
> I: So everything you earned went to him?
>
> R: Yes, it had to. I mean, you are married together; you have to raise children together. And I never knew that law existed. He never told me. See, the law here is just like, the money the wife earns it just belongs to the wife. The husband is not allowed to touch it. If I had put it all aside, I could have bought an apartment myself.
>
> I: You did well?
>
> R: Yes, but the money is gone. And I haven't got any proof. I never had him sign a paper. So well, you'll never see the money again. That's how smart he was, then already. (Elizabeth, Dutch woman divorced from Egyptian husband, living in Egypt)

Elizabeth, in a similar situation to the Moroccan woman in the Netherlands, trusted her husband to share his income and put the money she earned in his bank account separately. Only after divorce she learned that in Egyptian law, the property of the wife is kept separate. Having no *mahr* or savings in her own name, Elizabeth had no capital after her divorce, while the money she earned with the occasional freelance work or her business could have enabled her to buy her own apartment and, combined with the job she took after divorce, keep her children's residence independently of the maintenance from her former husband. Contrary to Malika, however, Elizabeth does not explicitly refer to Dutch law as the basis for her assumptions. Instead, she uses both a moral discourse and a legal discourse based on Egyptian family law. In her view, her former husband was responsible for informing her about Egyptian law and should not have accepted the money which he knew was legally hers.

Another issue with regard to property after divorce is related to the *Bezness*-stories. As already has been discussed in chapter 4, some Dutch wives considered their Egyptian or Moroccan husbands to have only been in the marriage to obtain a residence permit or for financial gain. In three cases, the Dutch wives later tried to get the money back that their former Egyptian husbands had taken from them. As has already been discussed in chapter 4, two of these women started civil or criminal

43 Conversations with the husband were quoted in English by the interviewee.

procedures in Egypt. Another Dutch wife tried to have half of her property returned in the Netherlands, where she started her marriage to an Egyptian husband, and where she, after returning from Egypt, started the divorce procedure. As she was married under communal property, she made a claim for half of the property they had owned, and which was now all in the hands of her former husband. However, after she had spent a lot of money to pay for translations of pieces of evidence, she could no longer afford to continue the procedure.[44] Moreover, her former husband was threatening to hurt her. For unclear reasons, she was advised by her lawyer to drop this claim and finalise the divorce case. Still, she was unhappy about this, and was considering options to somehow get her money back. These *Bezness* stories are strong examples of how interviewees felt treated unfairly or even robbed by their former spouse.

7.6 Conclusion

Thus, legal arrangements for financial security after divorce may work out differently in transnational cases. While couples can influence some financial issues before or during the marriage, for example by writing prenuptial agreements aimed at reconciliation of the two legal systems, it can be hard to imagine a divorce lying many years ahead, in another country, and most formal and informal arrangements made at marriage turned out differently at divorce. First of all, because of migration, arrangements made in one country for the security of the spouse providing care work at home may lose their validity in the other country. Secondly, migration can also possibly lead to a shift in gendered patterns of work. These differences between the systems also provide clear opportunities for forum shopping. Some of the interviewees in this study could have gained or lost much by acting strategically and aiming for a maximum of financial benefits, especially after divorce. However, none of the interviewees actually made full use of these ample opportunities for strategic behaviour. As described in earlier chapters, most interviewees chose to arrange their divorce, including the financial aspects, in their own country of residence and outside of the courts. Instead of strategic action, exploiting the collision of legal systems to maximise financial gain, gendered moral discourses informed the position of the interviewees, while actual legal provisions played only a minor role in their stories.

In this chapter I aimed to answer the question how transnational families arrange financial aspects of their divorce and how they handle law on these subjects. In these matters, gender took central stage in three ways. First of all, in all three countries, laws regarding marital property and maintenance are based on gendered patterns of household labour, compensating women for care work. Secondly, in the interviews maintenance is framed as a female right which can be claimed if needed, without distinguishing between spousal maintenance and child maintenance. This framing is

44 This is remarkable, as this interviewee was using government-sponsored legal aid, she should also have been entitled to a government-sponsored translator for documents necessary in the procedure.

based on a traditional male-provider female care-taker division of labour, regardless of the actual division of labour in the marriage and leaving no room for financially dependent men or men taking care of children after divorce to be maintained by their former spouse. In talking about the financial aspects, respondents mostly referred to two moral discourses, the first of earning and deserving and the second of need and wealth. Although respondents sometimes also used a more legal discourse, referring to rights they were entitled to under one or both legal systems, the actual legal position of the spouses in both legal systems was at best of secondary importance for their evaluation of their own situation. Thirdly, other moral discourses, including *Bezness* stories, on proper financial arrangements after divorce are also related to this traditional division of labour. Only Egyptian and Moroccan men were accused of financially benefitting from their (former) wife or marrying in order to obtain a residence permit, while women, regardless of their ethnicity, means, or actual division of care, can more easily claim a moral or legal right to share in the wealth of their (former) husband or to being dependent on his maintenance.

Chapter 8. Support in transnational divorce: actors, norms and their influence

8.1 Introduction

During a divorce, there are often more people involved than just the couples themselves. Divorcing couples may receive support and advice from their networks, friends and family, and they may also get into contact with all kind of professionals providing legal or social aid. While these statements are true for non-transnational couples as well, certain specific transnational aspects are relevant in the context of this research. First of all, migration may influence social capital, for example when migrating spouses lose part of their connections to networks in their country of origin or form new ones after migration (Hagan, MacMillan & Wheaton 1996; Zhou & Carl 1994; Coleman 1988; Curran 2002; Portes & Landolt 2000). Secondly, as has been demonstrated in previous chapters, there are some legal complexities and issues related to transnational divorce, such as the recognition of marriage or divorce in the second country and the involvement of migration law and residence status. These issues related to transnational divorce may require specific forms of support from both professionals as well as private networks. For example, specialised professionals can help navigating the complex interactions of two legal systems, and relatives or friends living in the other country can help arrange for documents needed in legal procedures. The main question in this chapter will be: which persons and organisations form the social context in which transnational divorce takes place and how did their involvement support or constrain the spouses in the divorce process? In answering this question, I will use the concepts social capital and transnational legal space. While the concept of social capital has strong positive connotations, I aim to demonstrate how the support of private and professional actors can also entail constraints. As will become clear in this chapter, this is due to the production and enforcement of norms on, for example, conducting a transnational marriage or handling the law in transnational divorce. These norms are created in transnational legal space.

Below, I will start with a short theoretical discussion of the concepts of social capital and transnational legal space. Subsequently, I will introduce three types of support: emotional support, practical support, and legal aid and information. For each of these types, I focus on two main sources of support and information during transnational divorce; professional actors, such as NGOs and embassies, and private networks including friends and family members. Afterwards, I will compare Dutch-Egyptian and Dutch-Moroccan transnational legal space, and the effects of differences between the Dutch-Moroccan and the Dutch-Egyptian spaces for spouses in transnational divorce. Lastly, I will analyse the norms produced in transnational legal space, demonstrating how the support of professional and private actors can also constrain people in how they handle the law in transnational divorce.

8.2 Social capital and transnational legal space

The concept of social capital has been used to describe an 'aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalised relationships of mutual acquaintance and recognition – or in other words, to membership in a group [...]' (Bourdieu 1986: p. 51). Several authors have pointed out that social capital can change as a result of migration (Hagan, MacMillan, and Wheaton 1996; Zhou and Carl 1994; Coleman 1988; Curran 2002; Portes and Landolt 2000). Especially in transnational marriages, where one of the spouses has migrated while the other has not (or at a young age), this situation can easily lead to one spouse having more social capital in the country of residence than the other. However, it must be noted that being part of a migrant community also provides access to new social capital, and that even the act of migration itself has been found to correlate with existing social networks (Palloni et al. 2001; Zhou and Carl 1994).

In addition to social capital, Bourdieu distinguishes two other main forms of capital, economic capital, such as property rights, and cultural capital. Cultural capital, especially in its embodied state, can be qualified as *Bildung*, including skills such as language skills and professional behaviour, and it is the product of a substantive investment of time, preferrably from a young age (Bourdieu 1986: p. 47-50). Similar to social capital, cultural capital can also be transnationally employed as 'migration-specific cultural capital' in transnational fields of migrants. Moreover, migrants also have agency in transferring their cultural capital from one country to another and forming new cultural capital in the country of residence (Erel: p. 645-648).

Capital is a concept with mostly positive connotations. According to Portes (2000), the concept of social capital:

> [...] focuses attention on the positive consequences of sociability while putting aside its less attractive features. Second, it places those positive consequences in the framework of a broader discussion of capital and calls attention to how such nonmonetary forms can be important sources of power and influence [...] (Portes 2000, p. 2)

Thus, by using the term social capital, the positive aspects of membership of social networks are emphasised, as an asset in transnational divorce. However, I would also like to draw attention to the negative aspects of the involvement of private networks. While family members and friends are a source of social capital, they also produce and enforce norms which can limit or constrain spouses in their making use of legal possibilities. Moreover, norms in social fields can also limit the access to social capital by exclusion if such norms are transgressed.

The second concept of importance for my analysis in this chapter is transnational legal space, defined by de Hart as 'a social field across borders, in which individual family members, family networks or NGOs mobilize law, creating and using new norms in response to the interaction or collision of different family law systems' (de Hart 2010: p. 2). I will use de Hart's concept of transnational legal space in analysing how spouses in transnational divorce interact with law and with others involved in

the divorce process and how these ties and interactions cross state but also community borders. However, I think that envisioning transnational legal space as a social field across borders may overestimate the interconnectedness and cohesiveness of the wide diversity of actors and norms active in this space (cf. De Hart 2010, p. 20). According to Glick Schiller 'Transnational social fields are not metaphoric references to altered experiences of space but rather are composed of observable social relationships and transactions. Multiple actors with very different kinds of power and locations of power interact across borders to create and sustain these fields of relationships' (Glick Schiller 2005, p. 51). As I will demonstrate below, some networks of actors in transnational legal space are indeed creating and sustaining social fields across borders, while others are not. Thus, instead of seeing transnational legal space as a single social field, I propose seeing it as a space comprising multiple social fields and networks of actors.

According to De Hart 'transnational legal space is multi-sited, encompassing daily lives and institutions both in the country of residence and the country of origin (of one of the family members)' (De Hart 2010, p. 8). As such, social fields and networks in transnational legal space overlap with local social fields in both countries, similar to what Moore (Moore 1973) has called semi-autonomous social fields (SASF).

By studying transnational legal space, the perspective is extended from individual spouses having access to social capital to the way family members as well as organisations and institutions interact and produce norms on transnational divorce. I will use the concept of transnational legal space to describe the interactions of individual spouses with networks of family members, friends, professionals and NGOs and the law in their transnational divorce. In transnational legal space, local social and legal norms of both countries interact, and specific new norms in dealing with transnational legal matters are created. Analysing these norms produced and enforced in social fields, which can both limit and enhance the possibilities of individual family members, forms a valuable addition to the limited positive perspective of social capital. In the next paragraphs, I start by analysing the different forms of support, emotional support, practical support and legal aid and information.

8.3 Emotional support

Many interviewees felt they needed 'someone to talk to' about the end of their marriage and the divorce process. This first category of support, emotional support, was mostly provided by friends or family members. Still, not all spouses felt they really needed emotional support. For example: 'Did they [friends and family] play a role? No, not really. We got some remarks like, are you separating? You've been married for such a long time, those kinds of remarks. But that was all.' (Claudia, Dutch woman divorced from Moroccan husband, living in the Netherlands). This Dutch woman did not receive and did not seem to need much support from her social networks. She divorced with little to no conflicts, and she managed to arrange everything amicably and informally with her former husband.

Other respondents were in need of emotional support but had only limited access to family or friends, for example:

> I fell into a sort of black hole, girl. I am alone here in the Netherlands. No support from family, friends. Real friends. You could say I've got acquaintances here. But friendship, friendship needs to be built. I only had acquaintances. (Sofia, Egyptian woman divorced from Egyptian man, living in the Netherlands)

Sofia relates her lack of a solid local network to her migration, as building real friendship takes time. Even though she still had some family living in Egypt and other European countries, she had only limited contact with them, as her former husband refused to provide her with the money necessary for visits during the marriage. Instead, she turned to professional help during her divorce; social workers helped her rearrange her life in the Netherlands. More respondents mentioned the lack of a personal network in their country of residence which could aid them in the divorce process and saw this as a consequence of their migration.[1]

In other cases, interviewees had a network, but their network did not support them in their divorce. For example, Rabia, a Moroccan woman, had been isolated by her Dutch-Moroccan husband when she came to the Netherlands after their marriage. She had little contacts outside of the home, as her former husband made her come home right after work, without talking to others. After her divorce, she went to a Dutch social worker:

> Just to talk. Not about the divorce as such, just to have someone to talk to. Because I had nobody. So I went, and there I could cry, I could unburden my heart. [...] Well, she couldn't really help me. It was just someone who listened. I could come up with solutions myself for all problems. [...] I just needed someone to talk to a bit, someone to listen. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

Even though Rabia was capable of arranging her divorce herself, having sufficient economic and cultural capital to do so, she still missed someone to talk to about the experience because she had little contact with family or friends. Although she had family members in both Morocco and the Netherlands, she felt she could not discuss her marriage crisis and subsequent divorce with them, because they had not supported her choice of marriage partner:

> My father, I could not talk to him. Because I am not used to talking about such things with my father. And I also had myself to blame. I was the one who chose him. In the beginning. Therefore I have to take the blame. And I need to solve everything myself. That's what I was thinking. (Rabia, Moroccan woman divorced from Dutch-Moroccan husband, living in the Netherlands)

1 For a more elaborate discussion of transnational ties, distance and emotional and practical support and care, see also the work of Baldassar (Baldassar 2007).

Although Rabia had family members in both Morocco and the Netherlands, she did not call upon their aid at the moment of divorce because she felt a need to take the consequences herself. As she had married her former husband against their will, she would not ask for their support after the marriage failed, as it was her own 'fault' she married him. Other respondents, mostly from mixed marriages also mentioned being excluded from their families as a result of their choice of marriage partner:

> Well, at some point my parents said: well once you have that [name former husband] out of the house, we'll be there for you. At some point he left the house. It was just before New Year's Eve. So I went to my parents for New Year's Eve. And then my father, it was only just after he left, he had only just packed his things, so I was really heartbroken. And my father kept on nagging me: how did things go? Why did it go wrong? You could have known beforehand. That kind of nonsense. So at some point I said: 'Pa, please stop, I really don't feel like it. You have to stop.' My mother got really sad. And I had put the children to bed there. But he kept carrying on. Then I said: 'you know what I'll do? I'll just go back to [city of residence]. Because I just don't want this bullshit anymore.' So I took the children from their beds, and at about nine thirty I drove back to [city of residence] and celebrated my own New Year's Eve. It was great, truly delightful. But well, then my father was really offended, so I did not see him for another half year. So much for the help. 'We'll help you if he's gone.' Well, look how they kicked me when I was down, right. (Ingrid, Dutch woman divorced from Moroccan husband, living in the Netherlands)

Again, Ingrid's parents had not supported the marriage and when they promised emotional and practical support, it was only under the condition that the husband had left the house. However, when the divorce came, Ingrid felt that they wanted to still win their case that she should not have married him, and, when she refused to do so, she felt let down by the lack of actual emotional support. In choosing a Moroccan husband Ingrid had crossed social norms regarding 'proper' husbands. Her parents' support was conditional on Ingrid's admitting she had been wrong and thus to re-commit herself to keeping to this norm. Like Rabia and Ingrid, other respondents also lost the support of their families because they crossed the social norms for choosing the right marriage partner. When these interviewees broke these rules, their family reacted with partial or complete exclusion from the support they would otherwise have offered at the moment of divorce.

Thus, emotional support was mostly provided by friends and family members. Only when they were not available or not supportive of the divorce, interviewees turned to professional help, such as Dutch social workers. Family members and friends were also the most important source of practical support, as will be further discussed below.

8.4 Practical support

The practical support interviewees received during their divorce differed. Some interviewees were able to arrange things themselves, without mentioning any need of support from others. Having sufficient cultural and economic capital, they did not need to rely on their social capital or turn to professional organisations in practical matters. People who needed practical support in their divorce case received this mostly from family members or friends. This support ranged from friends helping to move furniture from the marital home to a new house, to cases in which family members or friends provided shelter for abused spouses, arranged the divorce procedure or contributed financially to the upkeep of interviewees and their children. For example, Latif, an Egyptian man living in the Netherlands, was very suspicious of the Dutch court system. Instead of taking his case to court, he tried to gain the support of family members of his former wife by telling his version of their break-up and then asking them to intervene on his behalf. A communal friend was also involved in mediating between the former spouses. As Latif had migrated to the Netherlands on his own, he had no family members living there and his social capital was limited to friends and his wife's family.

In a second example, Margriet, a Dutch interviewee, mentioned the support of her sports team. She had confessed having an extramarital affair to her Egyptian husband and he had threatened to kill her new lover and she was afraid he would be violent to her:

> That same night I had sports practice. [...] I was so upset. So upset. Completely gone to pieces. So then my [sport] friends said: 'you should report him to the police for intimidation', and 'I know a phone number of a women's shelter.' 'Here's the key to my house, he doesn't know me, so if something happens you can always come to me'. Those kinds of things. (Margriet, Dutch woman divorced from Egyptian husband, living in the Netherlands)

Margriet's friends were all eager to help protect her from a potentially violent husband. However, in the end she made no use of the practical support offered by her sports team members, relying instead on support by her parents and sister and her new partner.

In several cases family members present in the country of residence proved a valuable source of practical support and of great importance in the divorce procedure. For example, Driss, a Moroccan man married to a Dutch-Moroccan wife, had migrated to the Netherlands because of the marriage. Having had little education, he worked in unskilled labour while his wife ran a business and handled all the accounts. When his wife's business failed she suddenly took their children and went abroad to escape her creditors, without telling her husband why and where they went. Driss was stupefied and left behind with severe debts, a situation he could not solve himself. He then made an appeal to some family members who had been living in the Netherlands for a longer time and had Dutch education. They helped him gain an overview of all debts, and arranged for subsidised legal aid and a specialised lawyer to start a

divorce case, hoping to put an end to harsh actions of the creditors of his wife's business. They also translated for him when he had to visit his lawyer, the local government or the court. In this case, Driss' lack of cultural capital in the Netherlands was compensated by his social capital. Without the support of his family members he would probably have been evicted from his home. In several other cases, family members also provided extensive support, including housing and maintenance. In this, there was a difference between migrating spouses in mixed and migration marriages. While many migrating spouses from mixed marriages had no family members in their new country of residence, most migrating spouses from migration marriages had family members already living in the Netherlands or Morocco. This can be explained by the Dutch-Moroccan context which entails certain specific migration patterns, as discussed in chapter 2, but also to other research which showed a relation between migration and social capital, as the presence of migrants in a person's family increases the chance of that person migrating her/himself (Palloni et al. 2001).

In two other cases, both migration marriages between a Dutch-Moroccan woman and a Moroccan husband, the marriage had been arranged by the parents. In both cases, the parents did not support a divorce. Similar to the women who did not follow the norms of their families in choosing a marriage partner, they could not rely on their family for aid in the divorce process. Jamila, whose story has already been discussed above, did not even want to inform her parents about her divorce:

> I'm still living in a story of lies. My parents don't know yet that I'm divorced. And I'm afraid to tell them. [...] What should I tell them? First of all I would get major problems at home. Because, in Morocco, you should return to the home of your parents. You cannot go elsewhere. Now I live here. I have some support from people. So for now I can live in this house. And I have support from friends in the Netherlands. But how long will it stay that way? Because this is just for the short-term. I don't know. I don't have any income. [...] And my father is really strict and orthodox. Then you can hardly leave the house. I know what my father is like. It would be a big shock for him. And he's diabetic. So now I'm thinking, my God, what should I do? How should I start? It would be such a shame for my parents, I'm divorced for a year and they don't know yet. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

Afraid of being forced to move back in with her parents and hurting them by revealing that she was divorced, Jamila sought support from some of her old friends living in the Netherlands. One of them actually provided her with a place of residence in Morocco and several supported her financially. However, even though Jamila's parents were not informed about the divorce, they were aware that her husband had married another wife, which they felt was not proper behaviour. They thus broke off contact with the husband and his family – to whom they were also related – enabling Jamila to hide the divorce. Moreover, her parents provided practical support in the form of child care when Jamila resumed her education after the divorce, and she ate most meals at their home. Thus, although this interviewee had broken several social norms by moving into a place of her own after her divorce, her family would proba-

bly still have supported her, especially since the divorce was not her own choice. However, in accepting their support, Jamila would have to keep to certain rules about proper behaviour for a divorced woman which would limit her freedom of movement. Therefore she chose to rely on her contacts back in the Netherlands, where she grew up, which had less stringent norms about female behaviour after divorce.

Professional organisations were only involved in providing practical support in a few cases. Most of these were in the Netherlands, and especially for those interviewees which did not have enough social, economic and cultural capital to arrange such things themselves. As we have seen above, the Egyptian wife who had a limited network in the Netherlands received emotional support from Dutch social workers. They also provided her with practical support in arranging for new housing and by helping her to apply for social security from the local government. Similarly, Jamila relied on professional support in arranging some practical matters related to her court cases, such as retrieving documents from another city. I will now further discuss how this and other interviewees received legal aid and information.

8.5 Legal aid and information

The third category of support, legal aid and information, is the only one in which professional organisations took a more important position than the private networks of the spouses. Only interviewees who had specific reasons for not turning to the legal system to dissolve their marriage used their social capital instead. As has already been discussed in earlier chapters, this happened especially in the Dutch-Egyptian context. Some divorces taking place in Egypt were also arranged without any legal aid involved, but by the spouses themselves, with only minor roles for their networks. Other interviewees also used social capital in their divorce case, but they used it in addition to legal aid by professional organisations, not as a replacement.

During the divorce process, spouses in transnational marriages may come into contact with a wide range of professional actors. As has been discussed in chapter 4, the involvement of lawyers is often necessary or even obligatory in a divorce case. Furthermore, as we have seen in previous chapters, there are some issues which require legal aid specific to transnational divorce, such as the involvement of migration law, the possible registration or acknowledgement of marriage and divorce in two countries and foreign documents which may need to be translated and legalised. However, it must be noted that only a minority of the spouses in this research considered a divorce in the second country to be necessary or relevant to their situation. Most, therefore, used local legal aid in arranging their divorce. Below, I will distinguish four main categories of actors active in transnational legal space, providing specific legal support in transnational issues; NGOs, private offices, lawyers and embassies and consulates and how they were used by the respondents in this research. Because of the differences in context, I will discuss the Dutch-Moroccan and Dutch-Egyptian transnational legal spaces separately.

8.5.1 Professional actors in Dutch-Moroccan divorce cases

A network consisting of a wide variety of interconnected organisations is, or was at the moment of research, an important part of the Dutch-Moroccan transnational legal space. These organisations offering social and legal advice and aid in case of transnational Dutch-Moroccan divorces include non-profit organisations, such as migrant organisations and other NGOs, as well as small businesses that arrange the legal recognition of Dutch divorces in Morocco for a fee. Part of this section is based on an article in which I have extensively described organisations active in providing social and legal aid in transnational Dutch-Moroccan divorce cases and I have analysed these organisations as a social field in itself, a transnational field of legal aid (Sportel 2011).

8.5.1.1 NGOs

The first category of actors in the transnational Dutch-Moroccan legal space concerns NGOs. In past years, many NGOs have been involved in providing transnational legal aid, both in the Netherlands and in Morocco. In Morocco, hundreds of organisations, ranging from women's rights organisations to environmental protection NGOs, are or have been active in projects on family law. Many of these organisations are organised in large cooperatives. For example, the LDDF (*la Ligue Démocratique pour les Droits des Femmes*) is an umbrella organisation of 14 local branches of women's rights organisations, each consisting of multiple organisations, including *centres d'ecoute* (local legal aid centres). Some of these organisations, especially in regions where many Moroccans have migrated abroad, are also actively involved in providing information about Moroccan family law, aiming at Moroccans living in Europe. At Dutch-Moroccan expert meetings organised by Dutch NGO *Stichting Steun Remigranten* (Foundation for Support of Returning Migrants, SSR) in 2008-2010, in both Morocco and the Netherlands, dozens of different Moroccan NGOs and lawyers were represented. None of them, however, focused exclusively on the Netherlands.

In the Netherlands, after the introduction of the new *Moudawana* in 2004, many projects were started to inform Moroccans living in the Netherlands about the legal changes, organising meetings on Moroccan family law for different audiences as well as giving individual advice and support. NGOs involved in these projects have a variety of backgrounds, ranging from so-called 'self-organisations', initiated by migrants living in the Netherlands (e.g. MVVN, Kezban) to women's centres (e.g. Idea or Dona Daria), development (COS) and other welfare organisations. Most NGOs of these last categories have become involved in providing information about Moroccan family law and legal aid to transnational divorcees on a subsidised project basis. Some of these organisations are working together in the *Landelijke Werkgroep Mudawwanah* (Moudawana working group). In 2010 and 2011 this working group got funding for a project in which they increased the number of 'other' NGOs involved by training over a 100 representatives (most of Moroccan or Turkish descent) from all kinds of

local NGOs and welfare organisations in the Netherlands to give information on Moroccan or Turkish family law.

Since the 1980s, SSR has been one of the most well-connected and well-known NGOs active in the Dutch-Moroccan transnational legal space, operating in both Morocco and the Netherlands. In 2008, their office in Berkane handled over 8,000 requests for help and advice on Dutch social security, Dutch and Moroccan family law and Dutch migration law.[2] The SSR office also had specific projects for women and children who are involuntary abandoned in Morocco cooperating closely with the Dutch embassy in Rabat. However, after funding was stopped, the main office in Berkane had to be closed in early 2012.[3] Similarly, a project run by Utrecht-based NGO IDEA with a website and an office where women could get information and advice on Turkish and Moroccan family law was discontinued in 2009.[4] A regional office of Development NGO *COS*, involved in organising projects with the aim of educating both local Moroccan communities and legal professionals about the new Moroccan family code, became bankrupt in 2011 after the municipalities of Rotterdam and The Hague withdrew funding. Thus, many of the NGOs involved in projects on Moroccan family law lost their funding after cutbacks in government funding. This means that much of the information on NGOs I gathered during my fieldwork between 2008 and 2011 and which has been discussed in (Sportel 2011) is now outdated and some of the services interviewees used are no longer available. Therefore, I have chosen not to provide a detailed account of my findings on NGOs in this chapter but to limit the discussion to those organisations which were contacted by respondents in this research.

Most respondents living in Morocco, both men and women, contacted the SSR office in Berkane for legal aid. However, in some of these cases the SSR was involved mostly in social security advice or procedures of the respondents and not (as much) in their divorce case. Others were referred to the SSR by the Dutch embassy or consulates in Morocco. The SSR then provided help or information themselves or further referred them to other organisations, especially specialised lawyers in the Netherlands. Especially for so-called abandoned women, the SSR had a central role in organising both legal as well as practical aid, working together with the Dutch embassy to facilitate their return to the Netherlands. After discovering that her husband had taken off with her and their child's passport during a family holiday in Morocco, Halima contacted the Dutch embassy for help:

> I went to the embassy, to the consulate. I did not know where to go. They referred me to SSR [the office in Berkane]. SSR helped me, found me a lawyer. Now I have a visa to return to the Netherlands for a month. I don't know how the procedure will go on from now. I have to

2 Annual report (Jaarverslag) SSR 2008. The majority of these requests dealt with social security issues of Moroccans who have returned to Morocco after a period of residence in the Netherlands.

3 The office was reopened later that year, by former employee Mohamed Sayem as an independent office.

4 The website www.metwet.nl still exists but apparently has not been updated since (accessed in May 2013).

> have been in the Netherlands for three years. I don't know. (Halima, Moroccan woman married to Dutch-Moroccan husband, living in the Netherlands)

Without the intervention of the SSR, Halima would have had difficulties finding the right lawyer and applying for specialised and subsidised legal aid in the Netherlands. After her return to the Netherlands, the specialised lawyer she was referred to by the SSR managed to arrange for an independent residence permit and assisted her in arranging housing and social security.

Apart from the SSR, no other NGOs were as profoundly involved in the cases in this research, although a few respondents had looked up information on the internet and may have visited Dutch NGO websites providing information on Moroccan family law. One Dutch-Moroccan interviewee mentioned contacting NGO MVVN, but their involvement was limited to providing some information by phone. This prevalence of SSR clients might be an overrepresentation as I have approached most – though not all – of these respondents through their office in Berkane.[5]

8.5.1.2 Market actors: private offices

A second category of actors involved in transnational Dutch-Moroccan divorce cases is provided by the market. There are several private offices, mostly run by translators, offering services related to transnational divorce, such as the translation of documents and assistance with legal procedures. These offices advertise on the internet, for example through websites like *talaq.nl*, *echtscheidingmarokko.info* or even on *marktplaats.nl*.[6] Their services are also offered and discussed on online forums aimed at Moroccan-Dutch such as *Maroc.nl*, sometimes providing no more information than a first name and a mobile phone number. Most of these offices are located in the Netherlands. Dutch company *Arabika* has offices in both the Netherlands (Amsterdam, Rotterdam and The Hague) as well as several Moroccan offices, including a branch located conveniently around the corner from the Dutch embassy in Rabat. All private offices can assist during the Dutch divorce case, arranging the translation and legalisation of documents and afterwards taking over the procedure for the recognition of the Dutch divorce in Morocco. Most promise to arrange 'everything' in five, six or eight weeks. Fees for this service can be quite substantial, running into several thousand euro.

However, the differences between profit and non-profit offices are fluid and not always clear. *Talaq.nl*, for example, advertises itself on their website and on internet forums as an 'aid organisation' whereas *Arabika* uses the word *rechtswinkel*, both seem-

5 I have also approached several other organisations for help in finding possible respondents for this research, as discussed in the introduction. However, the SSR was the most successful go-between, and I found most of the Moroccan-based respondents through their networks.

6 A quick search on google [executed June 2012] for 'Marokkaanse echtscheiding' (Moroccan divorce) reveals at least a dozen options, and there are probably many more without online presence. *Marktplaats* is a major Dutch online auction website comparable to E-bay, offering their customers the opportunity to buy and sell used and new goods as well as professional services.

ingly aiming to appear as non-commercial organisations.[7] Another example is Stichting Vrouw en Welzijn. This organisation is actually an NGO that organises projects for migrant women and children in the south of the Netherlands. In addition to these activities, most of which are subsidised by local government, the board of the Stichting privately arranges for the recognition of Dutch divorces in Morocco for a fee of 1,500 euro.[8] A Moroccan example of a private office is NL Services, run by a Dutch translator in Tétouan, in the north of Morocco. Services offered are handling questions, translations and Dutch legal procedures, including social security issues as well as family law matters. Although NL Services is a commercial business, fees are adjusted to the client's financial situation, sometimes handling cases of people in need *pro bono*.

Of the respondents in this research, none have made use of the services of private offices to arrange for the recognition of a Dutch divorce in Morocco. Although a few have had documents translated, they did not specify by whom, nor did they mention translators becoming involved in the divorce process. The Dutch-Moroccan Jamila received extensive help from private office NL Services. In her case, NL Services acted more as an NGO, as extensive legal aid was provided without cost. After Jamila had been forced by her parents to marry in Morocco, she had not been to the Netherlands since. After her divorce she wanted to return to the Netherlands, which she described as her home country, but in her absence she had lost her rights to residence. Through her Dutch contacts in the Netherlands she came into contact with NL Services in Morocco. Her return to the Netherlands turned out to be a complicated affair, which she would have been unable to navigate without the help of NL Services:

> I was really happy with her [head of NL Services]. Because when we went to apply, my passport had to be extended. Because it had to be valid for another nine months, or another six months I don't know. [...] In the beginning he [ex-husband] had all my papers. My passport, my identity card. He refused to give them to me.
> I: all of them?
> R: Yes, all of them. I told [director of NL Services], she said to me: I need your passport for the application. Then she said: you need to talk calmly to him first. I kept asking calmly, but he did not want to give me the papers. Then she said: now you need to tell him he has to give you the papers, or you will report him to the police. Your passport is your property. I would never have dared to do that on my own. But because [head of NL Services] knows the law, yes, she knows the rules, then I called him. Then I told him: listen, you got three days. If you don't get the passport [to me] in three days I'll go to the police and report. The passport is mine. [...] In the end, it helped. I got my passport. And I brought it to [NL Services] right away. Then she told me: 'oh dear, it's only valid for a few more months. We need to extend it.' And then I had

7 http://www.talaq.nl/, accessed on 19 June 2012 and http://www.arabika.nl/rechtswinkel, accessed on 18 July 2012. Traditionally, *rechtswinkels* are legal aid centres where people can get free legal advice on small matters, run by volunteers. Arabika's services are not for free however.

8 Interview with member of the board, 2009. This service is also advertised on their website.

> to go for another form. And for my birth certificate I had to go to Rabat. Because I was born in the Netherlands. And it was the first time for me to travel to Rabat. Well, [director of NL Services] arranged it all for me, because I was so scared. She told me, 'it's best if you take the bus, there is a direct line to Rabat. And then you need to go there for information and there for information.' I really wouldn't have made it without her. It's as if you're on the street on your own for the first time. I was alone and I was afraid. [...] Well, and then I went to Rabat. [...] and it turned out there was a problem with my birth certificate. Because my name, our last name, here in Morocco was not the same name as was written in [Dutch city]. [...Explains spelling mistake]. And we had to go to court [to correct the mistake]. It all had to go through, well, it was a big step. In the end I got the passport, and only then we could start the application. (Jamila, Dutch-Moroccan woman divorced from Moroccan husband, living in Morocco)

This quote illustrates how even the start of the application process for a return to the Netherlands required specialist knowledge to navigate both the Moroccan and Dutch legal system and procedures and their interactions. Jamila did not have adequate knowledge or experience to know where to begin, nor could she easily have acquired adequate aid from local Moroccan or local Dutch organisations for legal aid, due to the multiple and complex transnational dimensions of her case. Moreover, NL Services also provided coaching and support in undertaking these steps, such as travelling to the capital Rabat, a big issue for Jamila, who had grown up in the Netherlands and had been kept mostly indoors by her former husband in the years she had been living in Morocco. After NL Services had guided her through the collection of documents, a specialised Dutch lawyer was contacted to take further steps in the Netherlands to start the procedure.

8.5.1.3 Lawyers

Lawyers form a third category of actors involved in transnational Dutch-Moroccan divorce cases. Although lawyers are technically also market-level actors, their position is more complicated than the position of most private offices. First of all, in many divorce cases in the Netherlands the lawyer is subsidised by the government, meaning that people with an income below a certain level only need to pay a nominal amount.[9] The Dutch lawyers in this research were for a significant part of their clients, up to 90% (based on their own estimates), paid by the Dutch government, especially when handling cases from transnational couples living in Morocco, where income levels are lower than in the Netherlands. However, some lawyers feel that the compensation they receive in these cases is inadequate and not all lawyers are prepared to handle complicated cases like transnational divorces on a subsidised basis.[10] In Morocco, on the other hand, people must pay for their lawyers themselves. This means that for

9 There have been significant cutbacks on Dutch government-sponsored legal aid in 2012, but all of the interviewees in this study were interviewed before these new measures took effect.

10 See for example Harm Gelderloos in the 2008 annual report of the Raad voor de Rechtsbijstand (Legal Aid Council), p. 20.

many transnational couples it is actually cheaper to arrange their divorce in the Netherlands, even though the average fee of a Moroccan lawyer is far lower than that of a Dutch lawyer. Secondly, while some lawyers also function as private offices, arranging the transnational divorce in two countries for a fee, they may also be involved in non-profit activities, often together with NGOs. Experiences with specialised and non-specialised lawyers have already been discussed in chapter 4.

8.5.1.4 State-level actors: embassies and consulates

Finally, the fourth category of organisations active in Dutch-Moroccan transnational legal space consists of the embassies and consulates of both countries. Because embassies and consulates handle the legalisation of documents for use in other countries, almost all transnational family members will, at some point during their marriage or the divorce process, come into contact with an embassy or consulate. When registering marriage or divorce, the Ministries of Foreign and Internal Affairs of the Netherlands and Morocco may also be involved in the legalisation of documents. The Dutch embassy in Morocco is mostly concerned with divorce from the perspective of Dutch nationality and residence rights. They sometimes answer questions, but they will not of their own accord provide information about Moroccan or Dutch family law, although we have seen that they sometimes refer to NGOs such as the SSR in the cases of left-behind women. Problems with regard to the recognition of marriage and divorce often only arise during passport applications.[11] Some organisations were critical about the accessibility of the Dutch embassy in Rabat's policy to make appointments through the internet, to which not all their clients have access. This practice as well as receptionists not speaking Dutch and intimidating security procedures were mentioned a few times by interviewees but rarely perceived as a real problem. There are four Moroccan consulates in the Netherlands, located in the cities of Den Bosch, Rotterdam, Amsterdam and Utrecht. The Moroccan embassy is located in The Hague. These consulates can provide information on request on Moroccan family law and transnational marriages and divorces. The consulates share a legal representative, who can arrange some family law affairs directly at the consulate.[12]

Several of the interviewees had somehow been in contact with the Dutch embassy in Rabat or the Moroccan embassies and consulates in the Netherlands, mostly for arranging the legalisation of documents, visa or passports. One Dutch interviewee contacted both the Dutch embassy in Rabat as well as the Moroccan embassy in the Netherlands when preparing for her transnational divorce. In only one case in this research a Moroccan consulate provided more extensive advice in a transnational divorce case. Naima, a Dutch-Moroccan woman who married in Morocco, pressured

11 Interview head of Consular Affairs, 8-10-2009 Rabat, Morocco.

12 This legal representative is often described as a 'judge'. This does not, however, mean that court cases are held in the embassy, as in Morocco the concept 'judge' has a broader meaning than in the Netherlands. This information is based on data gathered during meetings at which the embassy or consulates were represented and interviews with divorcees who have had contact with the embassy during their divorce.

by her parents, but never actually started married life with her husband, went to one of the consulates to ask for advice in arranging a Moroccan divorce:

> R: I told the story to the consul like: 'listen, I want to divorce, but my parents do not support me. My father does not back me. And I have the feeling I'm just not taken seriously in Morocco. What can I do?' (Naima, Dutch-Moroccan woman divorced from Moroccan husband, no communal residence)

During the conversation, it turned out that the consul happened to know her father.

> The consul asked me: 'would you mind if we involve your father?' I really felt like: no. It's fine if you talk to him if I'm not there, but I don't want... I was like: 'if my father wanted to help me, it should not be because you asked him. He should do it by himself.' [...] The consul said, I remember this well, he said: 'we can help you, but [only] if you have registered the marriage here, in the Netherlands. If you are registered here as married.' He specifically asked for that. So when [I explained my situation] he said: 'it will be very difficult for us to do something for you from here.' (Naima Dutch-Moroccan woman divorced from Moroccan husband, no communal residence)

Naima only turned to the consulate because her parents would not support her divorce case and she did not have much success on her own in arranging her divorce case, which has already been discussed at some length in chapter 4. Unfortunately, as her marriage was never registered in the Netherlands, this contact with the consul did not help much in her divorce case.[13]

Thus, of the Dutch-Moroccan divorce cases in this research, 10 out of 15 had somehow been into contact with the organisations described above. Five respondents, including men and women, Dutch, Dutch-Moroccan and Moroccan partners did not make use of the services of one of these organisations. These respondents all lived in the Netherlands and used local Dutch lawyers and their informal networks in the Netherlands and Morocco to arrange their divorce. They were unfamiliar with the existence of specialised organisations or did not need or want their aid. Even though their divorce procedure might sometimes have run more smoothly with the aid of one of the organisations in this network, they all managed to arrange their affairs as they wished informally or by using national/local legal aid and their private networks. Of the ten respondents who had contact with one or more of these organisations, seven were living in Morocco. Two women living in the Netherlands, one Dutch, the other Moroccan, contacted a specialised lawyer which, together with other information on Dutch and Moroccan family law, they found through the internet. Most re-

13 According to several NGO representatives and interviewees arranging for a Moroccan divorce at the consulate has for some time been possible, until the consulates stopped providing this service. This might have been related to the introduction of the New *Moudawana* in 2004, but as I did not manage to get any information directly from the embassies or consulates I am unsure about the exact circumstances. The Moroccan consulates arranging for *Khul'* divorces is also mentioned in a BA thesis by Banaissa (Benaissa 2009, p. 29), but it does so without a clear source.

spondents living in Morocco, both men and women, worked with the SSR office in Berkane. Others were referred to the SSR by the Dutch embassy or consulates in Morocco.

8.5.2 Dutch-Egyptian divorces – professional actors

Although spouses divorcing in the Netherlands and Egypt have much the same legal issues as Dutch-Moroccan couples, a similar network of organisations providing legal aid in case of transnational divorce is not present in Dutch-Egyptian transnational legal space. There are fewer organisations involved in providing legal aid in Dutch-Egyptian divorces, and there seem to be only incidental shared activities such as lobbying or providing education. Specific for the context of Dutch women living in Egypt is the presence of informal networks of Dutch and other European women living in there, as has been discussed in chapter 2. Some Dutch interviewees therefore had easy access to the Dutch embassy in Cairo for information regarding their transnational divorce, through these networks. Others used these networks of foreign contacts to find a lawyer who would work reliably for foreign clients. It is also these networks in which the *Bezness*-stories circulate, providing a rather negative frame of victimisation for transnational divorce. Below I will discuss the organisations in the same four categories as the organisations involved in Dutch-Moroccan divorces discussed above, and I will then make a more extensive comparison between the two.

In contrast to the many NGOs involved in providing legal aid and advice in Dutch-Moroccan marriage and divorce, I have not been able to find any NGOs providing these services specifically in Dutch-Egyptian divorce cases. The only organisation which does provide some support is *Bezness alert*. This organisation was founded by Noor Stevens, after she had written her book *Kus kus Bezness* on her Dutch-Egyptian marriage and divorce story. The organisation aims to provide support for fellow Dutch 'victims of love fraud' and to warn others about the dangers of *Bezness*. The main focus of the organisation is on providing emotional support, including the organisation of self-help support groups and the publication of stories of 'victims' on their website. Furthermore, *Bezness alert* tries to raise awareness of *Bezness* as a problem and lobby with the Dutch Ministry of Foreign Affairs and Dutch welfare organisations for a more pro-active policy in handling *Bezness* and aid for victims. Although *Bezness alert* also has contact with several Egyptian lawyers, and would like to be able to refer to them, at the time of research they have not yet been able to find a 'reliable and competent lawyer' in Egypt.[14]

Similar to NGOs, there seem to be no private offices offering to arrange for Dutch-Egyptian divorces nor for the recognition of divorce procedures in the Netherlands or Egypt. A Dutch translator in Cairo told me she always referred her clients to the embassy, and would not provide information or answer questions regarding Egyptian or Dutch family law as she did not want to take responsibility for the effects

14 Interview Noor Stevens, June 2011, and *Bezness* alert website http://www.Beznessalert.com/doelstelling.html, accessed on 7 May 2012.

of such answers.[15] NGO *Bezness alert* has been considering starting such a private office and in 2012 organised a meeting to test the demand for diverse services like legal aid in divorce cases; translations; legalisations of documents; advice on real estate purchases and contracts in Egypt; and mediation in child abduction cases.[16] The persons present differed in their opinions on the usefulness of the possible services and the intended aims of such an office, and it remains to be seen whether the office will actually be started and what services it will offer.

There are also fewer lawyers specialised in Dutch-Egyptian divorces than in Dutch-Moroccan divorces. Like in Dutch-Moroccan divorces, it can sometimes be cheaper to divorce in the Netherlands than in Egypt, because of Dutch subsidised legal aid. This is mostly true for women who want to divorce without the consent of their husbands. In Egypt men do not need a court procedure or legal aid in order to obtain a divorce. Similarly, if transnational couples agree on a divorce, they can easily arrange their divorce without a lawyer.[17] Without the consent of the husband, women who want to obtain an Egyptian divorce need to start a complicated and possibly expensive procedure at an Egyptian court. However, although a Dutch procedure using subsidised legal aid is cheaper, this will not always be a viable option. As the recognition of a Dutch divorce in Egypt is, as far as I have been able to find, not possible, it would probably still be cheaper and easier to go through a full Egyptian *khul'* or fault-based procedure in order to formally end the Egyptian marriage. In Egypt, there are English-speaking lawyers specialised in transnational divorces between Egyptians and Europeans. However, their services can be quite expensive. Lawyers I interviewed in 2010-2011 mentioned prices up to 5,000 US dollars for arranging an Egyptian divorce, with extra amounts to be paid for the legalisation of documents. In the Netherlands, there is one Egyptian lawyer's office, offering legal aid in both the Netherlands and Egypt on their website.[18]

Contrary to the Dutch embassy in Morocco, the Dutch embassy in Egypt is more actively involved in providing information to transnational couples, including on their website. This information, while provided in English, is aimed at Dutch citizens marrying an Egyptian partner, and is mostly about Egyptian family law and Dutch migration procedures, not about Dutch family law. This information is mostly given at the moment of marriage, as the embassy is almost never involved in transnational divorce cases or the legalisation of divorce documents. According to an embassy representative, this might be related to many transnational marriages being informal, the long time it can take to obtain the actual divorce documents and the suspicion that people might be taking the documents to the Netherlands without the obligatory embassy stamps.[19] According to *Bezness alert*, they aim to cooperate with the Dutch Ministry of

15 By e-mail, January 2011.

16 March 2012, Rotterdam.

17 For a more elaborate discussion of lawyers in the divorce procedure see chapter 4.

18 http://www.elsharkawi.nl/, accessed on 26 April 2013. From the website it does not become clear whether services similar to those of Dutch-Moroccan lawyers or private offices are offered. Unfortunately, I never managed to interview a representative of this lawyer's office.

19 Interview with embassy representative, 5 December 2010.

Foreign Affairs and the Dutch embassy in Cairo in helping victims of *Bezness*. So far, this cooperation is limited to a possibility on the *Bezness alert* website to report cases of *Bezness*, the reports of which are forwarded to the Dutch Ministry of Foreign Affairs.

Even though the Dutch embassy in Egypt claims to get few requests for aid in transnational divorce cases, in some of the cases in this research the respondents did turn to the embassy for advice or information. Not all were satisfied with the help the embassy provided. The embassy was described as being a 'fortress' where employees did not speak Dutch and were not helpful, which seemed to be more problematic than in the Dutch-Moroccan context. Not everyone shared this view though; some people who had participated in embassy activities or knew Dutch nationals who worked there did obtain helpful information and friendly treatment from the embassy.

> R11: Look, I have to do it myself. It's not like the embassy will do it for you. You just have to have those papers together. And they'll tell you what steps to take.
> I: Because you've had contact with the embassy before?
> R11: Just quite well. Getting a passport, well yes, the people who work there we've known for years. First getting the passports, and with *Sinterklaas* we always go to the ambassador with the children.[20] So then you'll meet everyone again. (Elizabeth, Dutch woman divorced from Egyptian husband, living in Egypt)

These differences between positive and negative experiences with the embassy may be related to the ways people used to approach the embassy, through their networks, by formal appointment, or by showing up at the counter where visa applications are handled. I have also noticed myself during visits in 2010 that treatment at the 'general counter' can be rather indifferent and unfriendly, with few comforts provided for visa applicants who are left outside to wait. The entrance to the actual embassy was a different experience, in treatment as well as with regard to appearance.[21]

The Egyptian embassy in the Netherlands has more possibilities for legal involvement in transnational divorce cases than just giving information. For example, the embassy can handle the registration of *talaq*. This means that men, both Egyptian and Dutch (a Dutch husband only if he is formally a Muslim), can arrange their Egyptian divorce at the embassy. However, women have no such option; they have to go to Egypt to start a *khul'* case at the court. As in Egypt, the wife does not need to be present at the registration of the *talaq*, the authorities will inform her afterwards by sending a letter. The embassy has no possibilities to recognise a Dutch divorce. The embassy organises some educational activities about Egyptian law, but I did not

20 *Sinterklaas* is a popular Dutch holiday for children, celebrated on the 5th of December. At many Dutch embassies a celebration is organised for the local Dutch community in which a *Sinterklaas* figure appears to hand out gifts and typical sweets to the children.

21 The Dutch ombudsman in 1998 handled complaints about treatment at the Dutch embassy in Cairo with regard to these same issues in a report. The complaints were judged unfounded. De Nationale Ombudsman, report 1998/588, 29 December 1998.

manage to gain access as the embassy claims these activities are only accessible for Egyptian citizens. I suspect this also means they are not open to Dutch spouses of Egyptians who do not have Egyptian nationality.[22] As none of the interviewees had had contact with the Egyptian embassy in the Netherlands, I suspect that their role is less important than that of the Dutch embassy in Egypt.

8.5.3 Professional actors providing legal aid and information: the infrastructure of transnational legal space

Thus, organisations were far less important in providing legal aid and information in Dutch-Egyptian divorce cases than in Dutch-Moroccan divorce cases. Moreover, the organisations in Dutch-Egyptian transnational legal space do not share the same interconnectedness the network of organisations in Dutch-Moroccan transnational legal space has; they work more independently and on a national level without the transnational ties between organisations present in Dutch-Moroccan transnational legal space.

Elsewhere, I have demonstrated that the organisations involved in Dutch-Moroccan transnational legal space form a network with strong ties and producing shared norms and thus can be seen as a transnational social field of legal aid. Organisations from all four categories of actors described above are participating in this field, although not every organisation is involved in the same degree. This network does not consist of two national networks but is itself transnational, extending beyond national borders. Representatives from organisations based in both countries regularly meet each other in meetings organised in the Netherlands and Morocco and are engaged in shared activities such as advising and referring spouses during a transnational divorce, on a national and transnational level, and educating people about Moroccan and Dutch family and migration law and influencing policy (Sportel 2011).

This difference in institutionalisation between Dutch-Moroccan and Dutch-Egyptian transnational legal space might partly be explained by the fewer numbers of Dutch-Egyptian marriages and divorces compared to numbers of Dutch-Moroccan marriages and divorces, as discussed in chapter 2. Moreover, in the Dutch-Egyptian context, there is a large percentage of mixed marriages between Dutch women and Egyptian men while many of the Dutch-Moroccan organisations are funded for their projects for migrant women. As Dutch-Egyptian marriages mostly consist of an Egyptian husband and a Dutch wife they have less possibilities to connect to these frames, and there is only one NGO that could actively apply for such funding. The existence of the Dutch-Moroccan transnational network of organisations has been fuelled by all kinds of projects, including several expert meetings, for which NGOs have managed to gain government funding from several Dutch ministries, framing their issues in terms of emancipation and participation of migrant women. However,

22 Information obtained by e-mail from the Egyptian embassy in the Netherlands in cooperation with my colleague Friso Kulk, July 2011.

as funding opportunities have subsided, the network seems to be weakening and the number of organisations involved in transnational legal space is going down.

What, then, does it mean for transnational Dutch-Moroccan spouses when they make use of legal aid and information from the network of organisations during their divorce? And what might an involvement of similar organisations have meant in Dutch-Egyptian divorce cases or those Dutch-Moroccan divorce cases which were arranged without this involvement? In the interviews, it was especially in the cases that involved Dutch migration law in which the support of organisations was of crucial importance. Without legal aid and information by organisations specialised in transnational cases and their network of organisations, these spouses would not have had any chance of return to the Netherlands. The lack of a similar network of organisations in Dutch-Egyptian transnational legal space means that there is little specialised professional help available for these kinds of cases. Egyptians in cases similar to the story of the Dutch-Moroccan woman, Jamila, whose complicated case needed an integrated approach by someone competent in both legal systems and specialised in transnational cases, would probably have failed to return to the Netherlands (See also: Bakker 2008; Carlisle forthcoming). However, as my research included mostly mixed Dutch-Egyptian couples, none of whom had any issues with regard to Dutch migration law, there were no cases in which the availability and use of a transnational network of Dutch-Egyptian organisations would have made a crucial difference in the results of their divorce case.

Similarly, in Dutch-Moroccan cases without migration law issues, the involvement of organisations was more limited and consisted mostly of providing information which was helpful in making the divorce process run more smoothly, but it was not necessarily crucial for the outcome of the case. Most cases might have turned out rather similar without the involvement of the network of organisations. However, in transnational legal space, organisations as well as private networks are involved in producing norms on transnational divorce. Thus, the involvement of the professional organisations as well as private networks did not just provide support for the interviewees but sometimes also constrained them in handling their divorce case. These norms will be further discussed in the next section.

8.6 Norms and constraints in transnational legal space

As discussed above, I see transnational legal space as consisting of individual actors and networks of families, groups of friends, and organisations, some of which may be cohesive enough to be considered social fields. Moreover, these networks overlap with local social fields in both countries. In social fields, norms are produced, informing the kinds and amounts of support provided and excluding those interviewees which did not conform to these norms. Both social fields of organisations as well as of family and friends produced norms which were a condition for gaining their support. What then are the effects of these norms in transnational legal space for how spouses handled the law in their transnational divorces? I will now present two ex-

amples of cases which contain some clues with regard to this question, one in which the norms of organisations impacted the access to legal aid and one in which the norms of private networks influenced the divorce process. In both stories, I will pay specific attention to constraints produced by these norms.

In the first case Farid, a Moroccan father, was deported from the Netherlands after a prolonged custody dispute in which he eventually was denied access to his child for several years and thus could not gain a right of residence based on the contact with his child. After the waiting period in which his right to child access had been denied had ended, he wanted to re-enter the Netherlands in order to start a new contact procedure. He went to the SSR office for help but his request was not met with the same level of helpfulness as the requests of abandoned women. To his frustration, Farid first had to convince the SSR representatives that he actually wanted to see his child and that the new contact procedure would not merely be an excuse to return to the Netherlands.[23] This reluctance to help can at least partly be explained by this case not matching with norms produced in transnational legal space, by the social field of organisations. As I have demonstrated elsewhere (Sportel 2011), the Dutch-Moroccan networks of organisations can also be considered a social field, producing norms with regard to transnational divorce. In this network of organisations, two norms were widely shared. Firstly, most organisations seemed to consider transnational divorce mostly an issue of women, not men. Framing transnational divorce as a women's issue brings the focus of the participating organisations to protecting women's positions in transnational divorces. The involuntary abandonment of women by their husbands in Morocco without legal documents, for example, is condemned as a divorce strategy. Secondly, the organisations share a norm of no-fault divorce. This means that they do not aim to intervene in conflicts between the former spouses, or they consider the question of fault with regard to the failing of the marriage irrelevant. Instead, organisations see their work as helping clients against the complex procedures and interaction of divorce rules in a transnational context, not against their former spouse. These shared norms reflect similar national discourses and frames on family law and the rights of (Muslim) women in Morocco and the Netherlands, as discussed in chapters 2 and 3. Farid did not fit the category of female victims of divorce, especially as there had been allegations of domestic violence, making him more of a perpetrator than a victim. Contrary to the abandoned women, he had to 'prove' that his wish to return to the Netherlands was inspired by his wish to see his child. Nevertheless, like abandoned women he needed the help of specialised legal aid in order to have any chance of returning to the Netherlands for contact with his child. Even though he had strong social capital in Morocco, his complicated case required specific legal aid local Moroccan organisations could not provide. The norms of this social field of organisations constrained him in gaining easy access to their support.

23 He was asked to specify and write down the reasons why he wanted contact with his child. None of the mothers in this research who had been separated from their children reported ever being asked such a question.

In a second case family members from both spouses played an important role. Majda, a Moroccan woman, was married twice to the same Dutch-Moroccan man. He re-migrated to Morocco for the marriage, but he kept spending time in the Netherlands with his first wife, although he had supposedly already left her before marrying Majda. He also had an addiction to alcohol and did not maintain Majda and their child. During his first absence, Majda and their child lived with the father of her husband. Her own father supported her and the child financially. He did not agree with his daughter living with her in-laws while her husband was absent:

> My father told my husband that I should have my own house. And that he had to send money for his wife and child. Otherwise he would go to the police. You know, because my father took care of me and my son. My husband got the child benefits from the Netherlands, but he never sent anything to his son. (Majda, Moroccan wife with Dutch-Moroccan husband, living in Morocco. Interview was held with a translator present)

The father also interfered when the husband was violent to Majda: 'He beat me once. I told my father, and he came and told him: If you ever beat her again, you'll really go to prison.' (Ibid) When Majda eventually wanted a divorce, her father paid for a lawyer. He also was present at the court to support his daughter. As the husband showed up drunk, his father spoke for him. Supported by her father, Majda also arranged for a court order on the maintenance her former husband had to pay for their son. When he did not pay, Majda and her father went to court again to have the debt registered with the authorities and with customs, meaning that Majda's former husband would be arrested if he tried to enter Morocco. However, after a while the husband regretted the divorce. He asked Majda to take him back, and he promised to come back to Morocco to live with her and their son. As Majda wanted her son to grow up with his father, she agreed to marry him for the second time. She talked to her father and he agreed, but she also set some conditions. In order to enable her former husband to return to Morocco without being arrested at the border, she had to revoke her order for child maintenance. Her father wanted guarantees that the money would still be paid, and demanded a formal contract:

> He said: 'my daughter should have a good life with [former husband]. She shouldn't go back just like that. They'll have to go to court and put everything in a contract.' (Majda, Moroccan wife with Dutch-Moroccan husband, living in Morocco. Interview was held with a translator present)

Another demand of the father was to involve the family-in-law. An uncle of the husband was present as a witness when the agreement was made. Majda's father then provided a new home and furniture for the couple, and it was agreed that the husband would pay back the costs in monthly instalments. However, it soon turned out that the husband was still addicted and spent all his money on alcohol, 'turning the house into a pub'. Majda tried to hide this from her father by paying the household costs herself, as she owned a small business. But when the monthly instalments were

not paid her father had her husband arrested; he was sent to prison for five months for not paying his debts. All this time, Majda continued to visit her husband secretly in prison, without informing her father.

At the moment of the interview, Majda and her son had moved back in with her parents. After pressure from her father she had reluctantly contacted a lawyer and was preparing another maintenance claim.

> I thought it was a bit pitiful for [former husband]. Because he just came from prison. I told my father that, maybe, now he has been to prison he is good, he will become good again. But my father said: 'that's just not true. I know what he's like, it will never be good, he'll stay like this.' [...] Then I realised he has money. His father is giving him money. But he never gave anything to our son. (Majda, Moroccan wife with Dutch-Moroccan husband, living in Morocco. Interview was held with a translator present)

Majda thought this new maintenance claim would put her husband in prison again. She refused to start another divorce case, however, as she still loved her husband and hoped his time in prison would change his behaviour. She also blamed her family-in-law for not supporting her attempts to get her husband to psychiatric treatment for his drinking problems.

In this complicated story several family members intervened in the marital conflicts and the subsequent divorce and remarriage. While not being migrants themselves, in their involvement they were acting in the transnational legal space, producing and reacting to norms. Especially Majda's father had an important role. This role was not limited to advice and financial support but included using the law to actively intervene in his daughter's marriage by threatening to report her husband after an incidence of violence and actually having him arrested for his debts to his family against the will of his daughter. Furthermore he pressured Majda into taking several maintenance claims to court, which she probably would not have done otherwise. By doing so, her father was a very important factor in how she handled the law in her transnational divorce case and the main source of Majda's social capital. In this story, the father seems to be enforcing several social norms, some of which are social norms from local social fields, but others have distinctive transnational aspects. First of all, a good husband should maintain his wife and child and provide them with a proper place to live, separate from his family. Ideally, he should be present in the same country, but at least he should send money from the Netherlands, including the child benefits he receives for his son. The importance of Dutch child benefits returns in several stories from Dutch-Moroccan migration marriages, and the norm that they should be sent to the one taking care of the children is an interesting example of norms produced in transnational legal space. Furthermore, the husband also should not drink alcohol and not beat his wife. The father used several means to enforce these rules, at first trying to solve conflicts informally but using the law if other means failed. If the husband did not comply, he was punished by exclusion from the family, as the father pressed his daughter for divorce, as well as by invoking outside, state-enforced punishment by having the former husband registered at the border

and later imprisoned for not paying his debts. In her story, Majda was thus continually pressured to take legal steps, despite her reluctance to do so out of love for her husband.

8.7 Conclusions

In this chapter I have aimed to map the social context of transnational divorce and describe the actors involved in providing emotional, practical and legal support in transnational divorce cases. In Dutch-Moroccan transnational legal space, there have been many organisations involved in providing social and legal aid in transnational divorce cases. Moreover, many of these organisations were interconnected, forming a transnational social field of legal aid creating its own norms with regard to transnational divorce. While similar categories of organisations are also present in Dutch-Egyptian transnational legal space, the number and level of services offered is much smaller, and the organisations lack the interconnectedness of a network, let alone a social field. The absence of such a network for Dutch-Egyptian cases can be explained by the differences in the legal and migration context. For Dutch women living in the Netherlands, the recognition of the Dutch divorce in Egypt is often less important than for Moroccan or Dutch-Moroccan women living in the Netherlands. This is related to the presence of ongoing transnational ties, as has already been discussed in chapter 4.

An explanation can also be found in the relatively small group of Dutch living in Egypt and Egyptians living in the Netherlands and the relatively high number of mixed marriages between Dutch women and Egyptian men. Many of the projects produced by organisations in the Dutch-Moroccan network of organisations which enhanced the interconnectedness of this network, forming it into a social field, have been financed because of their focus on migrant women, a frame which is of little use to the context of Dutch-Egyptian marriages. However, this chapter also demonstrated the vulnerability of such networks and social fields. As many meetings and cooperation projects have been financed by Dutch local and national governments, connections dwindle or even disappear after funding is stopped, despite the efforts of the people involved. This means that the availability of adequate legal aid in complex cases present at the moment of research might disappear in the future. Especially for cases involving Dutch migration law, such as women who had been abandoned in their country of origin without legal documents, specialised legal aid has been shown to be of paramount importance in their divorce case, as it enabled them to return to the Netherlands, something which is hardly possible on their own. As such, the involvement of such specialised organisations operating in transnational legal space acted as a counterweight to their husband's privileged position based on Dutch nationality or residence status. However, in other divorce cases the involvement of organisations was less essential for the outcome of the case, even though it provided for a smoother divorce process.

Networks of family and friends, social capital, can also be an important tool in a transnational divorce. Especially family members sometimes provide extensive practical support, being involved in court cases or financially maintaining dependent spouses and children. The examples in this chapter illustrate how different forms of capital can interact in a transnational divorce. On the one hand, a lack of cultural or linguistic capital in a certain country, caused by migration, can be compensated by adequate social capital. On the other hand, this social capital can be disrupted by migration as well. In this, there were differences between mixed marriages and migration marriages. Most spouses from migration marriages already had some family members living in their new country of residence while this was not the case for most migrating spouses in mixed marriages. A few of the interviewed respondents managed to use their social capital transnationally, involving friends or family from the other country for support.

However, the involvement of informal contacts, friends, family members or colleagues as well as professional actors is not neutral. Transnational legal space consists of multiple social fields and networks, in which norms are created and enforced, mostly by exclusion. The main question in this chapter was how the involvement of the social environment constrains or supports the spouses in the divorce process. For some interviewees, knowing they had transgressed these norms by choosing the 'wrong' marriage partner or by divorcing from the 'right' partner, this was a reason not to turn to their family for support. Depending on their stories and positions, some interviewees were also confronted with friction between their case and the norms of NGOs and other organisations when they applied for support. Analysing social capital in the context of transnational legal space has made visible the norms imbedded in such networks, and how transgression of these norms can limit the access to support.

Chapter 9. Conclusions

9.1 Introduction

In this final chapter I will present the conclusions of this study on transnational Dutch-Moroccan and Dutch-Egyptian divorce. In my analysis I combined law and legal texts with a bottom-up approach in which the stories of spouses divorced from a transnational marriage were central. During the transnational divorce process, the spouses in this research were faced with many choices and decisions: where to arrange their divorce; whether or not to arrange for the recognition of the divorce in the other country; how to deal with child residence and contact; how to divide the marital property; and how to arrange for maintenance. The main question of this study was:

How do spouses from transnational Dutch-Moroccan and Dutch-Egyptian marriages handle law in case of divorce, how do they deal with different legal systems and how can this be explained?

In answering this question I will discuss five main themes, based on the sub-questions formulated in the introduction. First of all, I will start with an analysis of Dutch, Egyptian and Moroccan family law; their interactions and consequences for transnational families; and how the spouses in this research arranged their divorce in one or both legal systems. Secondly, I will discuss the issue of marital power relations and extend the perspective of power relations between spouses with a discussion of the power of the law in intimate relationships. Thirdly, I present my findings on transnational legal space and the kinds of support organisations and private networks provide in transnational divorce cases. Fourthly, I will go into the meaning of family law in the everyday life of transnational families. As has been demonstrated in chapters 4-8, discourses, frames and images on the law, on proper behaviour and parenthood after transnational divorce played an important role. These first four themes will together form the answer to the main question. Lastly, I will question one of the assumptions of this research by raising the issue of how special transnational families actually are, and if and how they are the same as or differ from 'normal', non-transnational families in the three countries.

9.2 Transnational divorce and the interactions of Dutch, Egyptian and Moroccan family law

9.2.1 Dutch, Egyptian and Moroccan family law

I have made an analysis of the law, jurisprudence, and other texts such as parliamentary debates for all three countries. Although the Dutch, Egyptian and Moroccan legal systems are generally seen as markedly different, especially with regard to gen-

der, my research could not confirm this assumption. Instead, all three family law systems can be seen as based on similar underlying notions of a gendered division of labour between the spouses, in which the husband (mainly) provides the means of living and the wife (mainly) provides care work. However, the three family law systems have each used different mechanisms to arrange for the upkeep of the partner doing the care work during marriage and after divorce. In Morocco and Egypt the financial position of women and mothers is protected by separating the marital property, a prompt and deferred *mahr* and an obligation for the husband to provide for the family, regardless of the wife's means. The Dutch legal system found a solution in a system of communal property and prolonged spousal maintenance after divorce. With regard to children, Morocco and Egypt give mothers the right and obligation to daily care while fathers have the right to take major decisions about the children and the right to a contact arrangement. In the Netherlands, especially since 2009, the law arranges for a division of care tasks after divorce in which both parents are now equally obliged to care for their minor children. Based on my analysis of parliamentary documents and jurisprudence, however, this norm has been demonstrated to mean a right (and obligation) to have contact, not to equally divided care work. In practice, most Dutch children live with their mother after divorce while they have a contact arrangement with the father. Thus, the legal systems of all three countries are based on a similar image of the family, but the Netherlands on the one hand and Morocco and Egypt on the other hand have chosen different or even contradictory solutions to protect wives and mothers from the financial consequences of divorce.

A major difference between the legal systems is the access to divorce, especially for women. The Netherlands has no-fault divorce for both women and men since the early 1970s. Since 2004, Morocco has similar no-fault options for divorce for both women and men. In both Morocco and the Netherlands, wives do not lose their rights to financial compensation for care work when they initiate the divorce. Egypt, however, has very easy access to divorce for men and couples who agree on the divorce. For women the access to divorce is far more limited, and it mostly entails renouncing financial rights.

9.2.2 The effects of interactions of family law in transnational divorce cases

When the Dutch and Egyptian or Moroccan family law systems interact, these interactions can have several effects for transnational families. First of all, they potentially provide spouses in transnational marriages with space for forum or legal shopping, arranging their divorce where it will benefit them most or even trying to gain financial benefits in both legal systems. Forum shopping is especially relevant with regard to financial issues such as the division of property and maintenance (cf. Baarsma 2011, p. 96).

A second possible effect of the interaction of two legal systems in transnational divorce is that people can be caught up in interactions, leaving them without any of the measures taken in the legal systems to protect spouses doing care work. For example, in mixed marriages, the absence of a *mahr* can leave Dutch wives without

financial means in Morocco or Egypt, where there are only very limited possibilities for spousal maintenance and no communal property. This effect can be strengthened by the shifts which sometimes occur in transnational marriages with regard to gendered patterns of work, as a result of migration. When gendered patterns of work are shifted or inverted, some family law provisions for child care and financial matters can have unexpected effects, such as mothers doing both care work and paid work and having to pay spousal maintenance to a mostly absent father, or fathers taking care of the children full-time but without a claim to spousal maintenance under Moroccan or Egyptian law.

Access to divorce can also be (further) complicated by the interactions of two legal systems. If spouses in a transnational marriage aim for recognition of their divorce in both legal systems, they may need to go through a second divorce procedure. The interactions of legal systems with regard to the acknowledgement of the foreign divorce or a full second divorce have different consequences for spouses based on their gender and nationality. First of all, whereas recognition of the Dutch divorce is possible in Morocco since 2004, this is not the case for Egypt. Egyptian men or Dutch Muslim men living in the Netherlands can easily divorce at the embassy, but Egyptian or Dutch women need to go through a full second divorce procedure in Egypt if their former husband does not cooperate. This makes the recognition of Dutch divorces in Egypt or Morocco, the latter especially before 2004, more of an issue for women, especially if they aim to remarry, as men have easier access to divorce as well as the option of polygamy. For transnational couples divorcing in Egypt or Morocco, the recognition of their divorce in the Netherlands can be problematic. Dutch international private law requires proof that the wife has assented or resigned to the divorce before registering an Egyptian or Moroccan *talaq* divorce, while this is not required for other types of divorce nor in 'ordinary' Dutch divorce procedures on the initiative of the husband. This means that it can be much harder for men to have their Egyptian or Moroccan divorce registered in the Netherlands than for women, in rare cases even making it impossible for Egyptian or Moroccan men to divorce in the Netherlands at all.

9.2.3 Handling interactions of family law systems

How then did people handle these family laws and their interactions in transnational divorce? In literature on a wide range of legal issues, litigants making strategic use of the availability and interaction of legal systems by so-called forum shopping is assumed and sometimes condemned, for example raising issues with regard to the protection of weaker parties in legal conflicts (Ruhl 2006; Bassett 2006; Algero 1999; Juenger 1994; Borchers 2010; Vonken 2006; Foblets 1998, p. 160, 211; Strikwerda 2008, p. 213; Jansen Frederiksen 2011). However, I have met very few cases in which spouses have actually chosen or tried to strategically choose a forum to maximise their gains from the divorce. Specific laws in one of the two legal systems were almost never mentioned as a reason for choices in the divorce procedure. I have found three possible explanations for this surprising finding. First of all, many spouses in

this research project made choices during their marriage or divorce which limit their possibilities of forum shopping, for example only having registered their marriage or divorce in one country. The possible benefits of forum shopping often were not a factor in these choices, as many spouses were unaware of the possibilities. Secondly, there were also impediments which limited an effective use of forum shopping. For example, judgments made in one country cannot necessarily be used to claim property in the other country. These practical impediments were sometimes judged as being too much hassle in proportion to the possible gains. Lastly, some respondents who were aware of the possible benefits of forum shopping deemed them unfair to use, and they therefore would not make use of these possibilities.

Instead of forum shopping, most interviewees made decisions in their legal procedure as they went along, getting married in a hotel lobby to be able to share a room or randomly choosing a local lawyer to handle their divorce. The law played little part in their choices as they navigated between practical and financial concerns (cf. Kulk 2013). Most couples, for example, only registered their marriage in the other country when it was necessary for the migration procedure while others only started a formal divorce procedure when there was a practical, immediate cause to do so, sometimes taking years to start a divorce procedure after the couple had separated.

In explaining these decisions to arrange legal matters in one or both countries, the presence of ongoing transnational ties was an important factor. In the absence of ongoing relationships with the other country, respondents simply had no reason to go through the trouble of a second divorce. These ties differed for mixed and migration marriages, as in migration marriages often both partners had networks of family and friends in both countries; the migration marriage in itself regularly was concluded because of these ongoing transnational ties. However, transnational ties cannot be presupposed based on the background of an interviewee or their marriage partner alone. Partners in migration marriages had sometimes lost their connections to the other country, while partners in mixed marriages had also created and maintained ties to the country of their foreign spouse.

While divorce in itself requires a legal procedure, the accompanying arrangements for child care, maintenance or the division of property after divorce were mostly made outside of the courts. Most respondents only mobilised the law after informal methods of conflict resolution, such as involving family members, failed. Litigation costs, both financial as well as emotional, further limited respondents' willingness or ability to start court procedures. Furthermore, there was often a lack of explicit conflict. Issues like maintenance, child residence or contact with the non-resident parent were generally not decided in explicit bargaining between the spouses or their lawyers. Instead, outcomes were either taken for granted, or one of the partners took a decision unilaterally. Some Dutch parents managed to use the easier mobility of their Dutch nationality as a powerful tool in deciding the residence of their children or to escape maintenance obligations, for example by leaving the country, involuntary abandonment in the country of origin of spouses and children or by taking the children to another country. This subject is closely connected to the issue of marital power relations, which I will turn to next.

9.3 Marital power and the law. The power of the law in intimate relationships

This study of divorce turned out to be an interesting opportunity to study marital power in a transnational context. Looking back on their marriage, some of the interviewees reflected on dimensions of marital power of which they said to have been unaware during their marriage. Literature on marital power relations is often based on resource theory (Blood and Wolfe 1960), describing how spouses exchange resources such as money and care in the household, providing them with a certain amount of power. With regard to the marital division of labour in this research, gender turned out to be of central importance. While some of the interviewed women experienced how their former husbands used greater access to money as a means of power and control, other women were the main providers in the household, but they still failed to exercise similar power and control over their husbands. Similar to what Pyke (1994) and Tichenor (2005) have found in the US, my findings demonstrate that money and labour in marriage are not universal resources to be used in a neutral exchange, but instead they are highly gendered and depend on the meanings attached in a specific context.

While most of the marital power literature looks at the division of labour, there are many more resources of marital power than money or labour. Some of these resources are specific for transnational marriages. First of all, the relatively 'strong' Dutch nationality and the mobility and rights of residence this nationality entails, called hierarchical citizenship by Castles (Castles 2005: p. 690) is one such resource. Through a dependent residence permit, the very right to stay in the country of settlement was linked to the marriage with the partner already living there. As such, the Dutch spouse acts as a kind of gatekeeper (de Hart 2002: p. 98-99) to the Netherlands, both through the structures of Dutch migration law, which put the migrated partners in a dependent residence position as well through his or her knowledge of Dutch society and language, what Bourdieu has called cultural capital (Bourdieu 1986). However, the power of these migration-specific resources is limited in time. Similar to Erel (2010), my findings demonstrate that new cultural capital can be acquired in the country of residence as well as sometimes be employed transnationally. Moreover, in all three countries partners gain a right to an independent residence permit or nationality after prolonged residence. This meant that the use of the resources of migration law and specific cultural capital were mostly limited to those whose spouse has migrated especially for the marriage. However, in the Netherlands, the waiting period for an independent residence permit has gone up from three to five years, and there is an added demand of passing an integration test (Strik, De Hart & Nissen 2013, p. 24-25), which means that the dependency of migrated partners now lasts for a longer period of time.

A second power-related theme was domestic violence. While not part of the interview topic list, the issue of domestic violence came up in almost half of the interviews. In the literature on domestic violence, several types are discerned, dividing violence into common couple violence, in which conflicts escalate into violence, and

intimate terrorism, in which the violence is part of a systematic pattern of control by one partner over the other.[1] These patterns are differently gendered. While intimate terrorism is mostly violence by men on female victims, common couple violence is equally performed by both men and women (Johnson & Ferraro 2000; Johnson & Leone 2005). Remarkably, stories in this research contained mostly references to intimate terrorism, committed by Dutch, Egyptian and Moroccan men to their wives, and only one to common couple violence in which both partners used violence marriage in conflicts. Like Römkens (2010), I suspect that this can be explained by the research methodology used in this study. I did not systematically include the topic of violence in the interviews and it generally only came up as an example mentioned by the interviewee to illustrate what went wrong in their marriage. Furthermore, the prevalence of domestic violence in this study is higher than could be expected based on the national statistics of the three countries. Again, I think this can be partly explained by methodological issues, such as approaching interviewees through NGOs, which may have led to an overrepresentation of problematic divorce cases. However, there are also some factors which might explain a higher incidence of violence in transnational divorce cases in general, such as the stress of the migration experience and the subsequent divorce, and changes in gendered patterns of labour (cf. Jewkes, Levin, and Penn-Kekana 2002; Anderson 1997). Further quantitative research on risk factors for domestic violence, taking into account the different types of violence, would be necessary to test this hypothesis.

9.3.1 Marital power relations and the divorce procedure

The question remains how these power relations work out in divorce procedures. First of all, migration law was used as an important tool in arranging the divorce. The involuntary abandonment of women and children in Morocco was used as a way to end a relationship while keeping control over the location of the former wife by preventing her return to the Netherlands, for example by taking away passports and residence permits. I have also found a case in which a Dutch woman used a similar strategy, ending her marriage by abandoning her Moroccan husband and their children in their home in Morocco, departing for the Netherlands where they could not follow her, thus effectively determining the future residence of the children and division of care work. In these cases, spouses used the strict Dutch migration laws and procedures and their privileged position in the Dutch legal system as a means of power to physically separate themselves from their (former) spouses. This resembles the strategic use of migration law described by Liversage (forthcoming) for transnational families in Denmark. Conversely, international child abduction was also used as a means to determine the further residence of the children and stop access arrangements by taking the children away to another country, without informing the other parent. Migration law is a thus very powerful tool in transnational conflicts, demon-

1 Instead of common couple violence some authors use the term situational couple violence.

strating the interconnectedness of migration law and family law for transnational families (see also: Van Walsum 2008).

The contrast of the lack of strategic use of family law and the active strategic use of migration law in some cases in this research is striking. Although a full explanation of this difference would require further research, possible factors could be that the strategic use of migration law is better known among migrant and mixed families than the possibilities of family law. In everyday life, transnational families are regularly confronted with their residence status, for example when travelling back and forth between the countries. Furthermore, migration law is a very powerful 'tool', directly enforced at the borders of the Netherlands.

Secondly, most respondents kept their issues of unequal power relations and domestic violence outside of their divorce procedure. This can be explained by the character of the divorce procedure itself and by laws regarding property division and maintenance. No-fault divorce does not provide a space for discussing the actions of spouses during the marriage. Instead, some spouses tried to mobilise criminal law in domestic violence cases, by reporting their former husbands or family-in-law to the police but none were successful. Furthermore, laws regarding maintenance or marital property division after divorce do not take into account the actual division of labour, they are based instead on a gendered exchange model.

Thirdly, because of legal arrangements like maintenance and child care, financial dependency and the power relations connected to that dependency can continue after the divorce. Some violent or controlling former husbands tried to retain control after divorce through child access or maintenance payments. Legal reforms taken in the Netherlands and proposed in Egypt which extend the possibilities of non-resident fathers to enforce child contact also extend the possibilities for abusive former husbands to continue their control over their former wife and children. The dominant child welfare discourse in which fathers are crucial to children's wellbeing, regardless of their behaviour during the marriage, leaves little room for the discussion of these risks, as has been illustrated by the unsuccessful lobby of 'concerned mothers' in the Netherlands.

9.3.2 The power of law in transnational families

When analysing the complex interplay between state law and power relations at the level of the family, Chunn and Lacombe (2000) suggest seeing law as a practice which can both constrain and enable agency, depending on the other power relations involved, including gender, social class and ethnicity (Chunn & Lacombe 2000, p. 13). In addition to the opportunities and constraints offered by migration law, I have found two ways in which family law constrains or enables the agency of spouses in transnational divorce. First of all by providing ways as well as limitations to contract and end a marriage (cf. Hull 2003). Having all kinds of legal implications, legal, state-registered marriage significantly differs from informal relationships and, to some extent, also from informal marriages, which are conducted especially in the Dutch-Egyptian context, as we have seen in chapter 4. These legal implications of a state-

registered marriage contain enforceable financial obligations such as maintenance during and after the marriage and communal marital property (in the Netherlands) and the status of children. Children born outside of wedlock can have serious problems in Egypt and Morocco, for example when registering for education (Kulk 2013). One of the legal implications of formal marriage is also court involvement in divorce when the relationship ends (with the exception of Egyptian men who can simply register a divorce in Egypt). Restrictions on women's ability to divorce and leave the family setting have also been found to be a strong predictor of domestic violence (Hajjar 2004, p. 3; Adelman 2000, p. 1231).

Secondly, the law can be mobilised to punish abuse or to back up or enforce claims, if these claims are legally valid, for example with regard to maintenance of children after divorce. As such, the law has also provided protection to dependent spouses or those who do not succeed in convincing their former spouses to let them access property, maintenance or children. A strong example of such enforcing powers, described in chapter 7, was the LBIO, a Dutch organisation that claims overdue maintenance payments. However, as we have seen in chapters 4-8, these powers of the law are not automatically inflicted but need to be called in by the spouses, which they did not all do.

Explanations for this lack of mobilising the law can be found in socio-legal studies. As studies in sociology of law have demonstrated, mental steps need to be taken to transform a conflict of interests into a legal dispute, and people also need a legal consciousness that the law can be of help in their problems (e.g. Felstiner, Abel & Sarat 1980; Merry 1986), and that the law is accessible and welcoming (Hernández 2010, p. 101). In other words, for the protection of the law to work in intimate relationships, one of the family members needs to mobilise it, something which not all interviewees in this study (fully) did. Furthermore, adequate legal information or aid is of great importance to mobilise the law successfully, to which not all interviewees had equal access.

My findings thus suggest that marital power is of importance for an analysis of transnational divorce. Furthermore, it also demonstrates the importance of law for the study of marital power, adding a legal dimension not often found in empirical studies on marital power, especially those in western countries. However, the way I researched marital power relations in a transnational context has its limits. This research has been done in the context of divorce and thus does not include 'successful' transnational marriages (cf. Kulk 2013), and I have interviewed only one of the spouses. A more systematic discussion of power relations in transnational marriages based on research in which both (former) spouses are included, following the example of Komter (Komter 1985, 1989), could provide further insights in the workings of marital power in a transnational context. Next to marital power relations between the spouses, the social context also played an important role in how people handled the law in transnational divorce. I will discuss these social contexts below.

9.4 Social fields and transnational divorce

During divorce, family members from mixed and migrant families act in transnational legal space (de Hart 2010), a space across borders which consists of institutions and networks of family, friends and organisations in both countries and in which norms with regard to handling the law are formed and enforced. Transnational legal space is formed by state institutions as well as transnational networks of NGOs, lawyers, and other actors. An important difference between Dutch-Moroccan and Dutch-Egyptian transnational legal space is the difference in institutionalisation. In the Dutch-Moroccan context, there have been many interconnected organisations providing social and legal aid in transnational divorce cases, forming a transnational network or social field of legal aid (Sportel 2011). While there are also some organisations active in Dutch-Egyptian transnational legal space, the number and level of services offered is much smaller, and the organisations lack the interconnectedness of a social field, which makes Dutch-Egyptian transnational legal space less institutionalised and harder to navigate.

As we have seen in chapters 3 and 8, these differences between Dutch-Egyptian and Dutch-Moroccan transnational legal space can be explained both by differences in the migration context as well as by differences in the legal context. Compared to the large number of Moroccan migrants in the Netherlands, there is only a relatively small group of Dutch living in Egypt and Egyptians living in the Netherlands, which mostly consists of mixed marriages between Dutch women and Egyptian men. Moreover, as it is not possible to have a Dutch divorce recognised in Egypt, while Egyptian men living in the Netherlands can easily divorce at the embassy, there are few services to be offered by private offices. Furthermore, as discussed above, migration marriages and mixed marriages differ with regard to the presence of ongoing transnational ties after divorce, which informs the need for recognition of the divorce in the other country.

Again, Dutch migration law plays an important role with regard to the necessity of the involvement of such a network of specialised organisations in transnational divorce cases. For example, organisations can help women abandoned in their country of origin return to the Netherlands, something which is hardly possible on their own. As such, the involvement of specialised organisations can counterweigh a Dutch spouse's privileged position based on his nationality and residence and help to get adequate legal aid in their divorce cases. However, this network of organisations has been demonstrated to be vulnerable. Due to declining funding opportunities, and especially, the end of government-funding for the SSR office in Berkane, it remains to be seen whether women and men abandoned in Morocco by their former spouse will continue to receive adequate legal aid to support their return to the Netherlands.

The relationship between institutions and organisations and private networks of family and friends in transnational legal space is complex and depends on the kind of support needed and the availability of this support. Institutions and organisations were the preferred source of legal aid, interviewees only relied on their personal networks in addition to professional legal aid or as a replacement if no adequate profes-

sional legal aid was available. With regard to practical and emotional support, the involvement of informal contacts, friends, family members or colleagues, social capital, was the primary source of support, and people only relied on professional aid if they did not have or could not access their private networks. The relationship between social and cultural capital and migration is complex. On the one hand, a lack of cultural and economic capital in the country of residence, caused by migration, can be compensated by adequate social capital. On the other hand, social capital can be influenced by migration as well, losing ties in the country of origin but also establishing new ties in the country of residence and in local or transnational migrant communities (Hagan, MacMillan & Wheaton 1996; Zhou & Carl 1994; Coleman 1988; Curran 2002; Portes & Landolt 2000). The effects of migration differed for mixed marriages and migration marriages. Most spouses from migration marriages already had some family members living in their new country of residence while this was not the case for most migrating spouses in mixed marriages. A few of the interviewed respondents managed to use their social capital transnationally, involving friends or family from the other country for support.

However, the involvement of both networks of family and friends as well as professional organisations is not neutral. They enforced local social norms as well as producing and enforcing new norms in transnational legal space on how to deal with transnational divorce. Support from private networks, as well as organisations, was often conditional upon meeting such norms, 'punishing' transgressions with exclusion, limiting the options of spouses in transnational legal space. When analysing the involvement of private networks solely as social capital to be freely employed in transnational divorce, this conditionality is easily overlooked. Studying both private and professional networks as social fields demonstrated how they can support as well as constrain spouses in transnational legal space. While I would not argue for abolishing the term social capital as a factor or tool in divorce, the constraints and exclusionary working of the involvement of both private and professional networks should be taken into account in future research.

9.5 Law in everyday life

In everyday life, images and perceptions of the law, or legal consciousness, can be just as important as the law in the books in forming and informing the experiences of people. In the stories of the interviewees, a number of moral and legal discourses were found which were of importance in how they experienced and handled their divorce. First of all, in the Netherlands and among Dutch migrants in Morocco and Egypt, there was a negative discourse on Islamic family law. In this discourse, Moroccan or Egyptian law is presented as both very powerful and completely gendered and ethnicity-based, providing Egyptian or Moroccan men with certain, unspecified, rights while taking away rights from Dutch women, a discourse referred to by some authors as legal orientalism (Kroncke 2005).

Secondly, with regard to child care after divorce, the welfare discourse took central stage. The welfare discourse centres on the best interests of the child, which should be the central concern of parents after divorce. It is present both in the stories of divorced parents, as well as in recent – attempts for – legal reform in Morocco and Egypt and has for some time been the central ideology in the Dutch legal system. Interviewees used two main stories about good and bad parents after transnational divorce, both part of the welfare discourse. While involved good parents share the burden of child care, bad parents are absent during the marriage or desert their children after divorce. Moreover, a good parent puts the best interests of the children before her or his own, excluding the children from conflicts with the former spouse, while a bad parent uses the children in ongoing conflicts. Both types of 'bad parents' fail to put the best interests of the children before their own.

Thirdly, with regard to arranging financial matters after divorce, several competing moral discourses were present. Respondents used a discourse of earning and deserving, in which sharing of financial resources can be lost by showing a lack of proper behaviour, and a discourse of need and wealth, in which sharing during and after marriage is the norm. For mixed marriages, the frame of *Bezness* is exceptionally strong. This frame entails that Moroccan or Egyptian men only marry Dutch women for financial benefits or a residence permit in the Netherlands, faking their love, while the Dutch women in these marriages really love their husbands and are thus deceived. This discourse of false love is connected to the tourist industry and experiences of swindle commonly shared by foreign visitors to Egypt.

A new Dutch discourse can be found in the issue of 'marital imprisonment'. This issue, which has been put on the Dutch political agenda after a very active and successful lobby by Dutch NGO *Femmes for Freedom*, concerns women who fail to get the cooperation of their husband in acquiring a foreign or religious divorce after their Dutch marriage or informal marriage has ended. In Dutch policy frames it is connected to forced marriages, involuntary abandonment in the country of origin and even female genital mutilation.[2] While at the moment of writing campaigns were primarily aimed at migrant women in migration marriages, this frame could potentially also be used by Dutch women from mixed marriages. Thus, an important part of discourses in transnational legal space is based in victimhood.

Kapur (2002) and Narayan (1997) warn about the use of victimisation discourses, especially when they contain claims of culture, as these are generally based in gender essentialism and cultural essentialism. Both authors point out how culture is central in explaining violence happening to 'Third-World women' or similarly, in the case of *Bezness*, to Dutch women by Moroccan or Egyptian men, while being neglected, when analysing similar violence against women in Western contexts (Narayan 1997; Kapur 2002). Blaming culture for violence disconnects this violence from the much broader issue of domestic violence (Narayan 1997, p. 90), as also happened in some *Bezness* cases in which the interviewees did not connect their experiences to domestic violence stories, but only to *Bezness*. Furthermore, victimisation discourses construct

2 *Kamerstukken II* 2012-2013, 32 840, nr. 8 (amendment Arib-Hilkens).

women as being 'thoroughly disempowered, brutalized and victimized' (Kapur 2002: p. 18). When applying the frame of *Bezness* to their divorce, interviewees reinterpret the entire marriage, recasting former partners as perpetrators and victims. In this process, their own agency as well as their powerful position based on their ethnicity and welfare differences between the countries is being downplayed while the image of the 'dangerous Muslim man' (cf Razack 2007) is reinforced. Why the *Bezness* frame is so influential among Dutch women in Egypt, and why it were especially Dutch women from mixed marriages who narrated their stories taking the position of victimhood, needs more research to explain. I tentatively suggest part of the explanation may be found in the complicated interconnection of mass tourism and power relations between the west and the Middle East, as analysed by Bowman (1989).

What then did the presence and use of these discourses mean for how respondents handled the law in their divorce? The importance of legal consciousness for actual (legal) actions taken by the spouses differed for different levels and topics for which choices needed to be made. First of all, images of both legal systems only rarely had an impact on choosing the country or legal system in which to start the divorce procedure. As has been demonstrated in chapter 4, earlier contacts with the legal systems of one or both countries, including experiences of discrimination or bureaucracy, had an impact on legal consciousness (Merry 1986; cf: Hernández 2010). But even when interviewees had a strong negative image of the law in one country and a positive opinion of the legal system in the other country, this was never a conclusive factor in determining where to arrange the divorce. All but a few respondents arranged their divorce locally, in their country of residence, regardless of their opinion of the local legal system.

Secondly, and contrary to the limited influence of legal consciousness to the choice of forum at divorce, at the moment of marriage, legal consciousness in some cases influenced the way spouses handled and experienced law, such as including conditions in the marriage contract or choosing to get married in one or the other country. Some interviewees, especially women, saw Islamic family law as a threat, which encouraged them to protect themselves by seeking legal information or advice on the Moroccan or Egyptian legal system before the marriage. Especially in more recent stories of Dutch interviewees married to an Egyptian or Moroccan husband, the discourse of legal orientalism was strongly present. Dutch law is either remarkably absent in these fearful stories or presented as a safe refuge, although it is not always as favourable as respondents assumed. Both of these positions do not encourage further investigation of Dutch family law.

Thirdly, while legal consciousness was never a reason to choose the forum or legal system in which to divorce, it was sometimes of importance in the choice made for arranging for child care or financial matters after divorce within one of the two legal systems. When arranging financial matters and child care after divorce, most interviewees used moral discourses when explaining their arrangements. Whereas the welfare discourse was present in all stories of divorced parents, it was, as Kaganas & Day-Sclater (2004) have also demonstrated, used to defend opposite positions, such as going to court or not going to court in the best interest of the children. With re-

gard to financial matters, wives in all three countries assumed they had a right to maintenance, which they could claim if they needed it. This framing leaves no room for financially dependent men or men doing care work after divorce to be maintained by their former spouse or for women paying maintenance. These gendered perceptions of the law fed certain positions of entitlement, which made a few respondents who would have been legally entitled to claim maintenance refrain from doing so. Only a few interviewees used a discourse of legal rights, but their actual legal position was at best of secondary importance for their evaluation of their own situation.

The *Bezness* frame also had an impact on the divorce procedure, as women who felt themselves to be victims of *Bezness* did not only start a divorce procedure but also (tried to) involve the police or the Dutch migration services, hoping to mobilise the authorities to punish their former husband as a perpetrator. Furthermore, women who felt they have been the victims of false love of their former partner also started to warn and inform others in mixed relationships, thus strengthening the discourse.

Thus, while legal consciousness does not necessarily influence legal actions taken during the divorce procedure, and in itself was not enough to induce a choice of forum for the divorce, some discourses were of importance for how people arranged matters after divorce, such as financial issues and child care, and their marriage. This study has demonstrated the interconnectedness between individual legal consciousness as shaped by personal experience with a legal system (see: Merry 1986) and the social context in which transnational marriages take place, including discourses in transnational legal space. Moreover, it also adds a transnational dimension to the study of legal consciousness, showing how legal consciousness of the same person can relate differently to foreign or local legal systems. In an increasingly mobile world, future research on legal consciousness should thus be aware of the multiple legal systems in which people, including members of transnational families, but also non-migrant families, may have had experiences.

Having discussed these four main factors which can explain how spouses handle the law in transnational divorce cases and the interaction of Dutch, Egyptian and Moroccan law; the law and ongoing transnational ties; marital power relations; norms and support in social fields; and legal consciousness; I will now raise one final reflective question below, how special are transnational marriages?

9.6 How 'special' are transnational families?

In this research, it has been demonstrated how transnational legal space encompasses institutions, NGOs and lawyers in both countries and that both migrant and non-migrant spouses can be actors in that space. However, by singling out transnational divorces, these are automatically set apart from 'normal', national, divorces. As comparable research for each of the three countries, especially the Netherlands, is limited, it is hard to compare transnational families to 'ordinary', non-migrant families and their experiences with the legal system in case of divorce. In many stories of informants, the transnational aspects of their marriage and divorce are limited or even

absent. Remarkably, only a minority of spouses in this research aimed at a reconciliation of their legal status in both legal systems, and even fewer tried to exploit the differences between the legal systems strategically. Instead, most interviewees seemed to be indifferent to their legal status in the other legal system and only took action if required or if they had specific reasons to do so, which might be years after the relationship ended. This is contrary to my expectations and also differs from the findings of Kulk, who reports that most of his respondents in transnational marriages aimed at arranging their legal status similarly in both countries (Kulk 2013). This raises the question how 'transnational', transnational families actually are in the way they deal with divorce. When spouses are only using the local legal infrastructure to arrange their marriage and divorce, what then sets them apart from other local divorces?

The first aspect which sets transnational families apart from non-transnational families is the possible involvement of migration law. As has been discussed above, migration law is the 'hard line' that sometimes simply cannot be crossed, enhancing or restraining mobility, and as such sometimes used strategically in disputes. Migration law requirements were often the incentive for spouses to take actions which have consequences in family law. Moreover, some marriages failed after the migration process to the Netherlands was unsuccessful or aborted.

Secondly, the fact that one of the spouses in a transnational marriage has migrated while the other lives in his or her native country is also relevant. Migration can influence power positions within the family. Not everyone was able to use his or her social or cultural capital transnationally, which limited the options of some spouses. However, this type of capital can be reacquired or transformed over time. Migration might even be the consequence instead of the origin of power dynamics in a relationship, influencing the decision of who is going to migrate to where. In this respect this research group might differ from other groups of people who live transnational lives, such as families who have migrated together or the children of migrants and mixed couples.

Thirdly, this research has demonstrated that the contexts in which marriages and divorces take place, including the factors of time, place and distance introduced in chapter 2, have been of great importance for how people dealt with the law in their divorce. Specific for transnational marriages are the public discourses on mixed and migration marriages and on Islamic family law which have been present at certain times and places relevant for this research, influencing how spouses in transnational marriages perceived the cultural, religious and physical distance between them. Most of these public discourses were highly gendered. Based on her research on the Ontario Sharia debate, Razack has raised the question 'how might feminists have avoided being drawn into the framework of superior, secular women saving their less enlightened and more imperilled sisters from religion and community and still responded to the dangers at hand?' (Razack 2007, p. 16).[3] Similarly, Nader (1989) has argued that both orientalist and occidentalist discourses frequently focus on the position of

3 The Ontario *Sharia* debate concerned the introduction of *Sharia* law as a voluntary arbitration option for Canadian Muslims in family law (Razack 2007).

women. By commenting on the position of women in the other society, both the west and the east obscure similar gender inequalities in their own society, implicitly placing the speaker in a superior position. Gender ideologies are thus also a part of distinguishing between 'us' and 'them' (Nader 1989, p. 323-325, p. 346). In this study, I have tried to avoid these pitfalls by analysing Dutch as well as Moroccan and Egyptian family law from a gender perspective, which revealed striking similarities obscured by the emblematic use of gender in general discourses on Islamic family law. Moreover, instead of commenting on the position of women in transnational marriages from an outside position, I presented a diversity of perspectives of both women and men in mixed and migration marriages, demonstrating how some experiences commonly ascribed to culture or gender are shared by interviewees from diverse genders, backgrounds and ethnicities. Recognising the influence of the specific contexts of transnational marriages, while at the same time acknowledging the diversity of stories and individual experiences of the people involved, is key to understanding this complex interaction.

Samenvatting

'Misschien ben ik nog steeds zijn vrouw'. Transnationale echtscheiding in Nederlands-Marokkaanse en Nederlands-Egyptische gezinnen

Wanneer een transnationaal huwelijk eindigt kunnen de voormalig echtgenoten te maken krijgen met twee verschillende rechtssystemen, ieder met eigen wet en regelgeving op het gebied van echtscheiding. De status van het huwelijk en de echtscheiding kan bovendien verschillen tussen de twee landen. Dit onderzoek had als doel te achterhalen hoe transnationale gezinnen tijdens hun echtscheiding omgaan met het recht. De hoofdvraag was: *Hoe gaan echtgenoten in transnationale Nederlands-Marokkaanse en Nederlands-Egyptische huwelijken om met het recht bij hun echtscheiding, hoe gaan ze om met de verschillende rechtssystemen en welke verklaringen zijn er hiervoor?*

Het onderzoek is gebaseerd op veldwerk in Egypte, Marokko en Nederland. De belangrijkste bron vormen 26 interviews met voormalig echtgenoten over hun huwelijk en echtscheiding. Daarnaast is er een analyse gemaakt van relevante wet- en regelgeving, jurisprudentie en overige documenten. Ook zijn er interviews gehouden met betrokken professionals waaronder advocaten en rechters, vertalers, migranten- en belangenorganisaties, ambassades en andere sleutelfiguren. In het onderzoek zijn twee verschillende groepen betrokken, zogenaamde migratiehuwelijken, van tweede generatie migranten met een partner uit het land van herkomst en gemengde huwelijken tussen autochtone Nederlanders en een Egyptische of Marokkaanse partner

Egyptisch, Marokkaans en Nederlands recht

Hoewel het Egyptisch, Nederlands en Marokkaans recht over het algemeen als sterk verschillend worden beschouwd bleek deze aanname niet te kunnen worden bevestigd door mijn onderzoek. Op basis van een analyse van wetgeving, jurisprudentie en andere relevante documenten zoals kamerstukken bleek dat alle drie de systemen zijn gebaseerd op vergelijkbare onderliggende ideeën over het gezin. Zij gaan uit van een op gender gebaseerde taakverdeling tussen echtgenoten, waarbij een echtgenoot, de man, voornamelijk kostwinner is en de andere echtgenoot, de vrouw, voornamelijk het huishouden en zorgtaken uitvoert. Om het levensonderhoud van de niet-verdienende partner tijdens het huwelijk en na echtscheiding veilig te stellen hebben de rechtsstelsels echter heel verschillende oplossingen gekozen. In Marokko en Egypte wordt de financiële positie van vrouwen en moeders beschermd door een bruidsgave, in combinatie met een volledige scheiding van bezit binnen het huwelijk en een verplichting van de man om het gezin te onderhouden, ongeacht het inkomen of vermogen van de vrouw. Na echtscheiding houdt de onderhoudsplicht voor de vrouw op,

maar blijft het onderhoud van de kinderen in principe de verantwoordelijkheid van de man. In Nederland bestaat juist een systeem van algehele gemeenschap van goederen, in combinatie met een langdurige onderhoudsverplichting na echtscheiding. De verplichting tot partneralimentatie is gender-neutraal geformuleerd, maar in de praktijk gaat het vrijwel altijd om betalingen van mannen aan vrouwen.

Deze verschillen tussen de rechtssystemen kunnen verschillende gevolgen hebben voor transnationale gezinnen. Ten eerste bieden ze echtgenoten de ruimte voor zogenaamd '*forum shopping*', waarbij verschillen tussen de rechtssystemen kunnen worden uitgebuit. Met name voor de financiële aspecten van echtscheiding, zoals alimentatie en de verdeling van bezit kan strategisch gebruik van verschillen relevant zijn. Ten tweede kunnen mensen door de interactie van twee rechtssystemen juist ook buiten alle maatregelen vallen die getroffen zijn ter bescherming van de echtgenoot die tijdens het huwelijk voornamelijk zorgtaken heeft verricht. Dat geldt bijvoorbeeld voor Nederlandse vrouwen die in Nederland zijn getrouwd met een Egyptenaar, zonder bruidsgave, terwijl er in Egypte slechts een zeer beperkt recht op partneralimentatie en geen gemeenschap van goederen bestaat. Ook de toegang tot echtscheiding kan ook worden gecompliceerd door de transnationale context. De interactie van rechtssystemen kan verschillende consequenties hebben voor de erkenning van een echtscheiding in twee landen, afhankelijk van nationaliteit en gender. Voortdurende transnationale banden vormden de belangrijkste verklaring voor de wens van respondenten een echtscheiding in beide landen te regelen. Dit maakte de erkenning van echtscheiding over het algemeen belangrijker voor migratiehuwelijken dan voor gemengde huwelijken.

Opvallend was dat de geïnterviewden in dit onderzoek maar weinig gebruik maakten van de mogelijkheden tot *forum shopping* die de interactie van twee familierecht biedt. De meeste geïnterviewden hadden vooraf geen duidelijk, strategisch plan voor de procedure, maar namen beslissingen pas gedurende hun echtscheidingsprocedure, als er een concrete aanleiding voor was. Het recht was daarbij van ondergeschikt belang, praktische en financiële overwegingen stonden vaak op de voorgrond. Specifieke wetgeving in een van beide landen werd maar zelden genoemd als reden voor de keuze de echtscheiding in een bepaald rechtssysteem te regelen. Er zijn drie mogelijke verklaringen voor deze verrassende bevinding. Ten eerste sluiten veel mensen al tijdens hun huwelijk bepaalde mogelijkheden voor *forum shopping* uit, bijvoorbeeld door hun huwelijk slechts in een van beide landen te registreren. Ten tweede zijn er ook praktische obstakels, het is bijvoorbeeld niet altijd gemakkelijk een claim uit het ene land in het andere land te effectueren. Ten derde hadden sommige respondenten ethische bezwaren tegen strategisch gebruik van de verschillen tussen beide landen.

Terwijl een juridische procedure over het algemeen noodzakelijk was voor de echtscheiding zelf, met uitzondering van enkele gevallen in Egypte, werden de meeste bijkomende kwesties zoals de zorg voor kinderen en de verdeling van bezit onderling geregeld. Vaak was hierbij geen sprake van openlijke conflicten tussen de echtgenoten, maar werden beslissingen eenzijdig genomen of werd de uitkomst als vanzelf-

sprekend beschouwd. Dit is nauw verbonden met het volgende onderwerp, macht in huwelijksrelaties.

Macht in huwelijksrelaties

De resultaten van dit onderzoek laten zien dat een analyse van machtsrelaties tijdens het huwelijk van belang is om te begrijpen hoe mensen tijdens de echtscheiding omgaan met het recht. Bovendien blijkt dat het recht en de beleving daarvan ook van invloed is op de machtsverhoudingen tussen de echtgenoten. Literatuur over macht in huwelijksrelaties is vaak gebaseerd op *resource theory* (Blood and Wolfe 1960), waarin de echtgenoten machtsbronnen als zorg en geld uitwisselen binnen het gezin. Gender bleek in dit onderzoek naar transnationale echtscheiding van cruciaal belang voor de betekenis van deze bronnen voor de machtsverhoudingen tussen de echtgenoten, vrouwen die de kostwinner in het gezin waren ontleenden daar minder macht aan dan mannen in een soortgelijke situatie.

In transnationale gezinnen kan ook de Nederlandse nationaliteit als een dergelijke bron van macht worden gezien, zeker zolang de andere echtgenoot een verblijfsvergunning heeft die afhankelijk is van het huwelijk. Ook waren er verschillende gevallen waarbij een van beide partners strategisch gebruik maakte van het relatief strenge Nederlandse migratiebeleid, bijvoorbeeld door al dan niet met samen met de kinderen naar Nederland te reizen waar de Egyptische of Marokkaanse partner niet zomaar kan volgen. Ook achterlating van partner en kinderen in het land van herkomst kan als een vorm van strategisch gebruik van de Nederlandse nationaliteit worden gezien. Migratierecht is dus een belangrijke bron van macht in transnationale gezinnen. Het is opvallend dat in dit onderzoek zo veel voorbeelden te vinden waren van strategisch gebruik van migratierecht terwijl er nauwelijks strategisch gebruik van familierecht plaatsvond. Dit zou mogelijk verklaard kunnen worden doordat transnationale gezinnen in het dagelijks leven al veelvuldig met migratierecht worden geconfronteerd. Bovendien gaat het om een relatief sterk machtsmiddel, gehandhaafd door de staat door middel van grensbewaking.

Geweld speelde een belangrijke rol in veel verhalen van respondenten. Hoewel geweld geen deel uitmaakte van de topiclijst die gebruikt werd in de interviews in dit onderzoek kwam partnergeweld veelvuldig ter sprake. In vrijwel alle gevallen ging het daarbij om zogenaamd "intiem terrorisme", waarbij controle van de ene partner over de andere centraal staat. Over het algemeen ging het dan ook om mannelijke daders en vrouwelijke slachtoffers, wat kenmerkend is voor deze vorm van partnergeweld. Deze vertekening zal deels kunnen worden verklaard door de gebruikte methoden, waarbij niet systematisch naar geweld is gevraagd en een groep respondenten met veel relatief complexe echtscheidingen. Er zijn echter ook factoren die een hoger percentage geweld in transnationale gezinnen aannemelijk zouden kunnen maken, zoals de stress van de migratiecontext en de omkering van genderrollen die soms plaatsvindt in transnationale huwelijken. Deze hypothese vereist verder onderzoek.

Sociale velden en transnationale echtscheiding

Tijdens hun echtscheiding bevinden transnationale gezinnen zich in *transnational legal space,* een transnationale ruimte die instituties en netwerken van vrienden, familie en organisaties in beide landen omvat en waarin normen met betrekking tot de omgang met recht worden gecreëerd en afgedwongen. Een belangrijk verschil tussen de Nederlands-Egyptische en de Nederlands-Marokkaanse context is de institutionalisering van deze ruimte. In de Nederlands-Marokkaanse context is een transnationaal netwerk aanwezig van organisaties die juridische en sociale hulp bij echtscheiding bieden. In de Nederlands-Egyptische context zijn veel minder organisaties actief, en zij missen de onderlinge verbondenheid en samenhang van een netwerk. Dit betekent dat er in de Nederlands-Egyptische context minder mogelijkheden zijn voor problemen die specifiek transnationale hulpverlening vereisen, zoals achterlating in het land van herkomst. Het Nederlands-Marokkaanse netwerk is echter kwetsbaar doordat het voor een belangrijk deel afhankelijk is van overheidssubsidie. De afnemende subsidiemogelijkheden, met name het aflopen van de subsidie aan het steunpunt van Stichting Steun Remigranten (SSR) in Berkane, betekent dat de bestaande transnationale hulpverlening wordt bedreigd.

Er bestaat een complexe relatie tussen hulpverlening door instituties en organisaties en netwerken van familie en vrienden. Van welke vorm van steun de echtgenoten tijdens hun echtscheiding gebruik maakten was vooral afhankelijk van het soort hulp waaraan behoefte was. De meeste mensen gaven de voorkeur aan instanties en professionele organisaties voor juridische hulp, en vielen alleen op juridische hulp van familie en vrienden terug als aanvulling, of wanneer er onvoldoende professionele hulp beschikbaar was. Praktische en emotionele steun werd juist vooral gezocht bij familie en vrienden, de hulp van professionele organisaties als maatschappelijk werk werd alleen ingeroepen als het eigen netwerk die steun niet kon of wilde bieden.

Met betrekking tot de aanwezigheid van een netwerk van familie en vrienden was er een verschil tussen migrerende en niet-migrerende partners. Door migratie kan sociaal kapitaal in het land van herkomst verloren gaan, maar kunnen ook nieuwe banden worden aangegaan in het woonland en met andere migranten. Hierbij was er een verschil tussen migratiehuwelijken en gemengde huwelijken. Door de migratiegeschiedenis van Marokko en Nederland hadden de meeste migrerende echtgenoten uit migratiehuwelijken familie of bekenden die al langer in het woonland woonden, terwijl dit vaak niet het geval was voor echtgenoten uit gemengde huwelijken.

De betrokkenheid van zowel professionele organisaties als familie en vrienden is echter niet neutraal. Bestaande sociale normen werden gehandhaafd, en nieuwe normen over transnationale echtscheiding werden gecreëerd. De hulp en steun die mensen kregen tijdens hun echtscheiding was vaak afhankelijk van in hoeverre zij zich aan deze normen hielden. Wanneer de aanwezigheid van familie en vrienden uitsluitend als sociaal kapitaal wordt geanalyseerd worden deze onderliggende normen al snel over het hoofd gezien. Een analyse van zowel professionele organisaties als privénetwerken van familie en vrienden als sociale velden bood dan ook een waardevolle aanvulling op het perspectief van sociaal kapitaal.

Recht in het dagelijks leven

Beelden en percepties van het recht, *legal consciousness* genoemd, kunnen voor de ervaringen van mensen minstens zo belangrijk zijn als het geschreven recht. In een transnationale context kunnen mensen banden hebben met meerdere rechtssystemen, en verschillende percepties hebben van deze rechtssystemen. Dit onderzoek laat bovendien zien hoe zowel individuele ervaringen met het recht als ook de sociale context *Legal consciousness* vormgeven. In de verhalen van de geïnterviewden waren een aantal morele en juridische vertogen aanwezig die van belang waren voor hoe zij omgingen met hun echtscheiding. In de eerste plaats was in Nederland en onder Nederlandse migranten in Marokko en Egypte een negatief vertoog aanwezig over islamitisch familierecht. In dit vertoog werd Marokkaans of Egyptisch recht gepresenteerd als machtig, volledig gegenderd en onderscheid makend naar etniciteit. Aan Egyptische of Marokkaanse mannen werden bepaalde, niet nader gespecificeerde, rechten toegeschreven, terwijl rechten van Nederlandse vrouwen juist zouden worden weggenomen. Dit discours wordt door sommige auteurs (Kroncke 2005) wel rechtsoriëntalisme genoemd.

Ten tweede was met betrekking tot de zorg voor kinderen het zogenaamde welzijnsdiscours van groot belang. In dit welzijnsdiscours staat het belang van het kind centraal. Het welzijnsdicours is zowel sterk aanwezig in recente discussies rond hervormingen in het familierecht in Nederland, Marokko en Egypte als ook in de interviews met gescheiden mensen. De verhalen van respondenten bevatten twee verschillende beelden over goed en slecht ouderschap na echtscheiding. Terwijl goede, betrokken ouders de last van het verzorgen van de kinderen deelden, waren slechte ouders afwezig tijdens het huwelijk of na de echtscheiding. Bovendien hielde goede ouders de kinderen zo veel mogelijk buiten de strijd met hun ex-partner, terwijl slechte ouders de kinderen actief inzetten in conflicten tussen de ouders. Kortom, beide archetypen van "slechte ouders" slaagden er niet in het belang van hun kind boven dat van henzelf te stellen.

Ten derde waren er met betrekking tot de financiële kwesties na de echtscheiding verschillende morele vertogen aanwezig. Aan de ene kant gebruikten respondenten een vertoog van het verdienen van financiële steun. In dit vertoog kan iemand de financiële steun of het verdelen van bezittingen verliezen door ongepast gedrag. Het tweede vertoog stelt behoefte en rijkdom centraal, waar delen tijdens en na het huwelijk de norm is. In gemengde huwelijken is er nog een derde, bijzonder sterk vertoog, het *Beznes*svertoog.[1] *Bezness*, ook wel liefdesfraude genoemd, verwijst naar Egyptische en Marokkaanse mannen die uitsluitend getrouwd zijn voor financieel gewin of een verblijfsvergunning, waarmee zij misbruik maken van de echte liefde van hun Nederlandse vrouw. Het vertoog is verbonden met de toeristenindustrie en de ervaringen van buitenlandse bezoekers aan Egypte met oplichting. Vrouwen die het gevoel had-

1 De term *Bezness* is afkomstig uit het boek van Noor Stevens 'Kus kus, Bezness'. Noor Stevens & Natasza Tardio. Boekerij 2011.

den slachtoffer te zijn van *Bezness* gebruikten hun verhaal regelmatig ook om anderen Europese vrouwen met gemengde relaties te waarschuwen, wat het vertoog versterkt.

Verschillende auteurs (Kapur 2002; Narayan 1997) waarschuwen voor dergelijke slachtoffervertogen, die vaak zijn gebaseerd op essentialistische opvattingen over gender en cultuur. Door de nadruk te leggen op culturele verklaringen wordt soortgelijk geweld in een westerse context gemakkelijk over het hoofd gezien. Wanneer respondenten hun huwelijk achteraf als Bezness kwalificeren wordt de hele relatie opnieuw geïnterpreteerd, waarbij de voormalig echtgenoten de positie van dader en slachtoffer innemen. In dit proces wordt zowel de eigen agency van slachtoffers als ook de sterke positie die Nederlandse vrouwen innemen op basis van hun etniciteit en de welvaartsverschillen tussen Egypte en Nederland afgezwakt, terwijl het beeld van de gevaarlijke moslimman wordt versterkt.

Deze vertogen, die deel uitmaakten van het *Legal consciousness* van respondenten waren op verschillende manieren van invloed op de echtscheiding, afhankelijk van de onderwerpen en soorten keuzes die moesten worden gemaakt. Aan de ene kant was het beeld van het recht in een land nooit de doorslaggevende factor in hun keuze in welk land de echtscheidingsprocedure te starten, zelfs wanneer geïnterviewden een sterk negatief beeld van het recht in een van beide landen hadden. Een negatief beeld van Islamitisch familierecht en de angst voor *Bezness* was daarentegen juist wel van belang op het moment van de huwelijkssluiting. Vooral in recentere gemengde huwelijken was het negatieve vertoog over islamitisch familierecht voor Nederlandse geïnterviewden aanleiding om zich nader te verdiepen in het Marokkaans of Egyptisch recht en bijvoorbeeld voorwaarden te laten opnemen in het huwelijkscontract. Door deze aandacht voor islamitisch recht werd er weinig aandacht besteed aan het Nederlands recht.

Afsluitende reflectie: Hoe 'speciaal' zijn transnationale gezinnen?

Door onderzoek te doen naar transnationale echtscheiding wordt een verschil verondersteld ten opzichte van 'gewone', nationale echtscheidingen. Echter, slechts in een deel van de verhalen van de respondenten speelt de transnationale dimensie van hun huwelijk daadwerkelijk een belangrijke rol bij hoe zijn hun echtscheiding hebben geregeld. De bevinding dat veel transnationale gezinnen zich bij echtscheiding in de eerste plaats op het rechtssysteem in het woonland richtten, en alleen de echtscheiding in het andere land regelde als daar een specifieke aanleiding voor was, roept dan ook de vraag op wat transnationale echtscheidingen eigenlijk onderscheidt van andere echtscheidingen.

Ten eerste is de mogelijke betrokkenheid van migratierecht een belangrijk verschil. Migratierecht kan de mobiliteit van mensen vergroten of juist beperken, en kan soms strategisch worden ingezet in conflicten. Bovendien waren vereisten in de migratieprocedure voor veel betrokkenen een aanleiding om bepaalde stappen te nemen die ook in het familierecht gevolgen hadden, zoals het formaliseren van hun relatie door middel van een huwelijk. Het mislukken van de migratieprocedure om samen in

Nederland te gaan wonen betekende in sommige gevallen ook het einde van het huwelijk.

Een tweede relevant verschil is het feit dat een van beide partners in een transnationaal huwelijk is gemigreerd, terwijl de andere partner in zijn of haar geboorteland woont. Dit betekent vaak een verschil in cultureel en sociaal kapitaal, wat de machtsverhoudingen binnen het gezin kan beïnvloeden. Deze verschillen worden echter vaak kleiner naarmate iemand langer in het nieuwe woonland heeft geleefd.

Ten derde heeft dit onderzoek laten zien dat de context waarin het huwelijk en de echtscheiding plaatsvinden van groot belang zijn voor hoe mensen omgaan met het recht in hun echtscheidingsprocedure. Zoals wordt uiteengezet in hoofdstuk 2 wordt deze context gevormd door de factoren, plaats, tijd en afstand. Specifiek voor transnationale gezinnen zijn publieke discoursen over migratiehuwelijken en gemengde huwelijken die van invloed zijn op hoe mensen de culturele, religieuze en fysieke afstand tot hun echtgenoot uit een ander land beleven.

De meeste van deze vertogen zijn sterk gegenderd. Kritische auteurs als Razack (2007) en Nader (1989) hebben laten zien hoe zowel orientalistische als occidentalistische discoursen zich vaak richten op de positie van vrouwen in de andere samenleving. Genderideologieën zijn dan een middel om onderscheid te maken tussen "wij" en "zij". Razack vraagt zich in haar analyse van het shari'adebat in Ontario dan ook terecht af: "how might feminists have avoided being drawn into the framework of superior, secular women saving their less enlightened and more imperiled sisters from religion and community and still responded to the dangers at hand" (Razack 2007: p. 16). In dit onderzoek heb ik geprobeerd deze valkuil te vermijden door een kritische genderanalyse van zowel Nederlands als Egyptisch en Marokkaans recht te verrichten. Deze analyse liet zien dat er opvallende overeenkomsten zijn in de onderliggende beelden over het gezin, die aan het zicht worden onttrokken door het symbolisch gebruik van gender in vertogen over islamitisch familierecht. Doordat dit onderzoek zich in de eerste plaats richt op de verhalen en ervaringen van echtgenoten, heb ik laten zien hoe ervaringen die vaak worden toegeschreven aan cultuur of gender worden gedeeld door zowel mannelijke als vrouwelijke respondenten met verschillende etnische en culturele achtergronden. Het is daarom van groot belang om zowel de specifieke context van transnationale gezinnen als ook de diversiteit van verhalen en individuele ervaringen van betrokkenen te onderzoeken.

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Curriculum Vitae

Iris Sportel was born in Zwolle on August 6, 1983. She studied Cultural Anthropology and Arabic Language and Culture at the Radboud University Nijmegen. She based on fieldwork at shrines in her master's thesis (2008) on Islamic saints. From 2008-2013 she worked as a PhD candidate at the Institute for Gender Studies at the Law, Centre for Migration Law, and the Institute for Gender Studies at the University. In 2013 she started working as a researcher at Maastricht Univ research project on forced marriages, abandonment and 'marital captivity' search has been commissioned by the Dutch ministry of Social Affairs a ment. She is also a board member of the Dutch-Flemish Socio-legal st tion (VSR) and of Stichting Gast, a local organization in Nijmegen pro undocumented migrants.